The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page iii.

VOL. LXXV. **Saturday, July 11, 1931.** No. 28

Current Topics.

Jersey's Solicitor-General.

WE ARE much indebted to the *Jersey Morning News* for a detailed account of the remarkably interesting and dignified ceremony of swearing-in the new Solicitor-General for the Island, Mr. CHARLES WALTER DURET AUBIN. Before the Full Court, convened by the Bailiff, and in the presence of the Lieutenant-Governor, Major-General E. H. WILLIS, C.B., C.M.G., and a distinguished representative company, Mr. AUBIN, after prayers had been read, said that he desired to present to the court the letters patent appointing him to his new office so that cognisance might be taken of them. After the letters patent had been passed to the Bailiff he handed them to the Attorney-General, Mr. ALEXANDER MONCRIEFF COUTANCHE, who read them out. "We will and by these Presents Do," ran the letters patent, "Command that the said CHARLES WALTER DURET AUBIN shall be invested and established by Our said Officers in the quiet possession of the Office aforesaid upon sight of these Our Letters Patent without any let or hindrance of the Governors Bailiffs Judges Delegate Jurats or Officers of the said Island for the time being . ." After the reading the court formally agreed that the letters patent should be duly registered, and, the Attorney-General having delivered a short congratulatory address, Mr. AUBIN advanced and, discarding his black advocate's robe, was robed by the usher with a scarlet gown which his father before him had worn for many years. The oath of office was administered by the Bailiff, and the new Solicitor-General then took his seat in the accustomed place. The Act of the Court was read by the Greffier. At the conclusion of the ceremony the Solicitor-General, it is reported, requested the Bailiff to adjourn the sitting so that he might greet in the accustomed place and in the accustomed manner all those who had honoured the ceremony with their presence. Refreshments were then served in the Old Committee Room, where the Solicitor-General received the congratulations of his many friends. The new Solicitor-General of Jersey was called to the Bar by the Middle Temple in 1923.

"Naming" a Member.

IN HATSELL'S "Precedents of Proceedings in the House of Commons" a pleasant anecdote is told of ARTHUR ONSLOW, the great eighteenth century Speaker of the House of Commons. The story runs that as he was often heard, when a member did not attend to his admonition but persisted in disorder, threatening to name him—"Sir, sir, I must name you"—and on being asked what would be the consequence of putting the threat into execution, answered "The Lord in heaven knows." Apparently at that time nothing particular happened if a member was "named," that is, by being addressed from the chair by his name instead of in the customary way as "the honourable member for So-and-so"; the mere fact of naming him in the unusual way being held to be a sufficient mark of the disapprobation of the House. As time went on, however, and intensive obstruction became one of the weapons of the more intransigent members, the attitude of the House changed, and the fact of "naming" became something more than a mere *brutum fulmen*; and as we saw last week, the "naming" may be followed up by a motion that the member "named" be suspended from the service of the House. When the offence against the rules of the House takes place in Committee, the Chairman suspends the work of the Committee, the Speaker takes the chair, the matter is reported to him, and the same procedure is followed. The question of suspension is put without debate. As all students of constitutional law are aware, there have been in the past many conflicts between the House of Commons and the courts regarding the privileges claimed by the former, but there appear to have been none as to the power of the House to regulate its own proceedings and to enforce their conduct in an orderly way by resorting, if necessary, to the drastic step of suspending those who have infringed its rules.

Demolishing a Church.

THE ACCUSATION sometimes levelled against the Church of excessive conservatism in outlook and action would appear to be overwhelmingly refuted by a commendable scheme, well in keeping with the advancement of the times, which was recently framed by the Ecclesiastical Commissioners and sanctioned by the Judicial Committee of the Privy Council on 25th June. The suggestions of the Commissioners provided for the demolition of the church of St. Peter-at-Arches, Lincoln, the sale and secularisation of the site, and the use of some at least of the materials for the erection of a new church much needed in Lincoln's suburbs where corporation and private enterprise have developed new housing estates. Although the church which is to be pulled down was built in 1724, the Commissioners stated that it was not of such outstanding historic or architectural interest or merit as to make it an exception to the general rule. The demolition, however, was objected to by a number of the members of a Church Defence Committee, formed in 1927, for the express purpose of saving the church in question and another, St. Benedict's, from demolition. The committee had, in fact, itself provided sufficient funds to save St. Benedict and ensure its continued use for ecclesiastical purposes. They now contended, in opposing the pulling down of St. Peter's, that that church, which was built to the designs of a local architect in the tradition of Sir CHRISTOPHER WREN, alone remained as an example of church building between the Reformation and the Gothic revival in the nineteenth century. They believed that the proposed demolition was undesirable on historical, architectural and æsthetic grounds, and in support of their

contention they appended to their petition against the scheme the opinions of a number of eminent architects and other authorities. Each case, however, the Lord Chancellor pointed out, in giving the judgment of the Board sanctioning the demolition, must be decided on its own particular facts, and the question in the present case was purely one of degree. "I need hardly say," observed his Lordship, "that in a case where a church is of very great historical interest, or of very great architectural or archæological interest, this board would be very loth to sanction the demolition of such a church." After very careful consideration, however, they had come to the conclusion that the advantages of following the course suggested by the Ecclesiastical Commissioners were greater than the advantages of allowing that particular church on that particular site in that particular parish to remain standing. In passing, it should be noted that St. Peter's was in fact in a bad state of repair, and that it would probably cost something over £2,000 to put it right, and also, that it was not required as a parish church, there being three other churches within easy access of the parishioners. The Board, said the Lord Chancellor, quite appreciated the views and the opinions of the petitioners, and did not forget that they had provided a considerable sum of money to prevent St. Benedict's from becoming disused.

Compositor's Error a Contempt.

THE RULE *nisi* which a Divisional Court granted earlier in the year, calling on the editor of the *Star* newspaper to show cause why he should not be committed for contempt of court was considered by a Divisional Court on 14th April last, consisting of the Lord Chief Justice, Mr. Justice AVORY and Mr. Justice HUMPHREYS (*Rex* v. *Editor of Star: Ex parte Stewart, The Times*, 15th April). The rule was moved at the instance of an architect who was charged with forging and uttering a document purporting to be a building contract. The publication of the alleged contemptuous matter took place before the evidence for the prosecution had been completed before the magistrate, and of course before the defendant had had the opportunity of pleading at all. The reporter in his copy merely stated that the defendant again appeared at Bow-street. The sub-editor substituted the words "pleaded not guilty" for "again appeared" and struck out the sentence "he pleaded not guilty," which came a little later in the MS. The compositor by mistake omitted the word "not" so that the words "pleaded guilty" appeared, and the error was not corrected by the printer's reader. In addition someone had inserted in the proof the words "on the bill," which presumably meant that the case would be mentioned on the contents bill circulating in the district where the defendant lived and carried on business. The Lord Chief Justice, in delivering the judgment of the court, pointed out that there had been gross carelessness in substituting the word "guilty" for "not guilty." His Lordship stated that much allowance must be made for the haste in which newspapers were prepared for the press, and that if he thought there had been malice in the publication there would have been only one course to take. As the court did not take that view, the rule was made absolute, with costs as between solicitor and client and a fine of £100 was imposed. The judgments in "*The Queen*" v. *Payne & Cooper* [1896] 1 Q.B. 577, make it quite clear that contempt of court has been committed where something has been published "which is either clearly intended, or at least is calculated to prejudice a trial which is pending" (per Lord RUSSELL, C.J., at p. 580). Where there is an intention to prejudice a fair trial, there is good ground for a committal order being made: *Ex parte Smith* (1869), 21 L.T. 294; *Yorkshire Provident Assurance Co.* v. *Gilbert & Rivington* (1894), 11 T.L.R. 143. This sort of contempt is fortunately rare in modern times, but *Rex* v. *The Editor of the "Star,"* illustrates another, if not equally culpable at any rate equally dangerous, kind of contempt.

Criminal Law and Practice.

HOME OFFICE SCHOOLS.—Those who wish to make some sort of study of the problem of crime and its treatment must needs interest themselves in the question of the juvenile court and its method if they are to understand the problem as a whole. Many habitual criminals begin young; and to deal rightly with the delinquent or the neglected child is to make a good beginning in tackling the problem.

For the young the two best methods are undoubtedly probation and committal to a reformatory or an industrial school. The two are complementary, not antagonistic to each other, for different classes of cases need different treatment.

Recently the National Association of Probation Officers has been holding a conference in London. At the same time there has been going on an exhibition of the work done in the Home Office schools (as reformatory and industrial schools are now described) in order that anyone who is interested might see the kind of instruction given in the schools, the results of their handiwork, and also some of the inmates of the schools giving displays of various kinds.

The exhibition showed plainly that lads and girls are now taught to do really useful productive work, and that some of them, at all events, attain a high standard of skill. There is little difficulty, even to-day, as H.R.H. The Duke of York said in opening the exhibition, in placing the boys and girls in good situations.

A further sign that those responsible for the schools believe in the work they are doing, and have nothing to hide, was the invitation printed on the programme to all visitors to visit any school at any time and to see the children under their ordinary conditions of life. It is an invitation well worth accepting.

COMMITTAL TO CONVENIENT SESSIONS.—The provisions of s. 14 of the Criminal Justice Act, 1925, are becoming by now quite widely known and used; in fact judicial criticism of their excessive or inappropriate use has been heard.

Equally, s. 11 of the same Act has been found to remove many inconveniences and difficulties which formerly existed in respect of venue in indictable cases.

Here and there, however, an instance arises where it is not immediately clear that what is desirable and convenient is legally practicable. Recently a lad was charged before a bench in County A with an indictable offence committed in County A. The court was informed that he already stood committed, on bail, to take his trial at the quarter sessions for County B for an offence committed in County B. The bench considered it proper to commit him again to take his trial in County B, at the same sessions; but as the offence they were investigating occurred in County A, and as the sessions for County A would be held within a week or two, it was clear that there could be no committal to B quarter sessions under s. 14 of the Criminal Justice Act, 1925, owing to proviso (*a*) to sub-s. (1).

The solution of the difficulty was found in s. 11 (2), the material part of which is as follows: "Where any person is charged with two or more indictable offences, he may be proceeded against, indicted, tried and punished in respect of all those offences in any county or place in which he could be proceeded against, indicted, tried or punished in respect of any one of those offences."

The sub-section may possibly have been intended primarily to meet the case of a multiple offender who is charged at the same time before a single court with a number of offences committed in various places. Be that as it may, we think the bench in question was perfectly justified in holding, as they apparently did, that a person remains "charged" with an offence while he is awaiting trial for it; thus the lad, at the time he was charged before the bench in A county was also still charged with the offence committed in B county, and could therefore be indicted in B county under s. 11 (2).

Price Maintenance Agreements.

THERE is in circulation an unofficial draft of a Bill promoted by enthusiasts behind the Committee on Restraint of Trade which aims at checking the activities of the Proprietary Articles Trade Association and other bodies concerned in maintaining a definite selling price for advertised patent and proprietary goods.

During the last decade of the nineteenth century a great change was effectively introduced into the old-time shop-keeping methods of this nation of ours. That change took the form of what was technically known as "price cutting"—a method by which a tradesman would seek to attract custom to his shop by offering certain articles in general demand at a price often slightly below what they cost him, relying upon the sale of other articles to recoup him for the trifling loss he sustained upon the first purchase. It was in fact merely a variation of the "sprat to catch a whale" method—adapted to shop-keeping.

But this price-cutting idea had unlooked-for results—with only one of which the present observations are concerned. It was applied as a matter of convenience by its votaries to what were termed "proprietary" articles extensively in demand; and this is what it led to. A B & Co. placed on the market some special article—a "patent" medicine we will say—and spent large sums in advertising it, thereby creating a regular demand for it on the part of the public. Some enterprising tradesman started to offer the article at a "cut" price—possibly losing a halfpenny on every packet he sold. All his competitors did the same naturally; and presently the recognised price for that particular article came to be something substantially less than its "face" value as fixed by the proprietors. Then our enterprising tradesman and his competitors began to put up and offer for sale an article exactly similar in all respects, but obviously much more economical and favourable to the buyer; and systematic "substitution" or "passing-off" became the order of the day. Where there was not actual substitution there was the innocent alternative on offer; the trader was always sure of a handsome profit on the "alternative" (since notoriously the cost price of widely-advertised nostrums bears little relation to their sale price, the main overhead charge being that for advertising—a charge which the substituted product offered by the individual retailer of course does not have to bear).

And so in process of time the proprietors of advertised nostrums and specialities began to find that serious inroads were being made into their sales by this crafty method of offering an attractive alternative; and inasmuch as the instances of fraudulent substitution were a decimal point compared with the perfectly lawful exhibition of an article offered under a different name and bearing outwardly no sign of imitation, strong measures had to give way to tactics, and the proprietors of advertised nostrums and specialities had perforce to offer terms in order to secure their market. Accordingly they formed an association and offered a guaranteed profit to every retailer who would sign an agreement not to sell to the public below a fixed minimum price. Supplies were withheld from retailers who would not sign the agreement in question; they in consequence were placed in the position of having to tell the public who asked for the article that they were unable to supply it—an invidious position for a shopkeeper to be in.

The legal position in cases of this description was fully gone into by the Court of Appeal (Lord HANWORTH, M.R., SARGANT and LAWRENCE, L.JJ., in *Palmolive Company of England* v. *Freedman* (1927), 44 T.L.R. 86, and it is of interest to note that the court was not in agreement—SARGANT, L.J., delivering a dissenting judgment. The facts in the case were that the defendant, a retail tradesman, purchased certain "Palmolive" soap (a proprietary article) from the plaintiffs under an agreement by which he bound himself not to sell it at less than sixpence per tablet. Subsequently plaintiffs found that defendant was selling the soap at fivepence per tablet—whereupon they sued for an injunction. The defence was that the agreement was in restraint of trade and contrary to public policy, and therefore illegal. ASTBURY, J., held that the defence failed and granted the injunction sought. Defendant appealed, but without success.

SARGANT, L.J., in his dissenting judgment expressly and emphatically brushed aside the defendant's contention that there was "extortion" from the public, and rested his decision upon a consideration of the relations between wholesaler and retailer, holding that the agreement in question was, in fact, unfair to the defendant as it went beyond the plaintiff's reasonable needs—in this respect differing from Lord HANWORTH, M.R., and LAWRENCE, L.J., the other members of the court. We thus arrive at the conclusion that the really material issue in a case like this is not whether such an agreement between wholesaler and retailer affects the public by increasing the price purchasers might otherwise have to pay, but whether it imposes unreasonable obligations upon the retailer. And that conclusion is confirmed by the previous authorities cited in the case—of which the *Adelaide Steamship Co. Case* (1913), 109 L.T. 258, was particularly referred to, as it dealt with the principles of law relating to monopolies and contracts in restraint of trade. The long learned judgment of Lord PARKER in that case deserves to be carefully studied:—

> "At common law," said his lordship, "every member of the community is entitled to carry on any trade or business he chooses, and in such manner as he thinks most desirable in his own interests, and . . . no one can lawfully interfere with another in the free exercise of his trade or business unless there exists some just cause or excuse for such interference. Just cause or excuse for interference may sometimes be found in the fact that the acts complained of have been done in the *bonâ fide* exercise of the doer's own trade or business and with a single view to his own interests: but it may also be found in the existence of some additional or substantive right conferred . . . by contract between the parties."

Applied to the present case that might be translated thus: A is entitled to sell soap in any manner and at whatever price he chooses; but B is not obliged to let A act as agent for his (B's) soap. He is quite entitled to say to A, "If you wish me to supply you with my soap for re-sale to your customers I will do so upon condition that you do not sell it at a less price than sixpence a tablet." If, upon that, A enters into a written agreement in such terms, that agreement is legal and enforceable as being within the terms of Lord PARKER's judgment.

This case, however, raised quite a different issue from that raised in the "black-listing" series of cases of which *Ware and de Freville Ltd.* v. *Motor Trade Association* [1921] 3 K.B. D. 40, is typical. In that case the right of a trade association to control fixed prices to be observed by its members and to publish a "stop list" the object of which was, in effect, to prevent supplies of price-maintained articles reaching such persons as should not conform to the fixed prices. The plaintiffs were motor car dealers, but were not members of the defendant association, which consisted of manufacturers only, who fixed certain prices for their goods, above or below which they deemed it undesirable that their goods should be sold. In order to enforce this object, the bye-laws of the association provided that on proof to the satisfaction of the council that any person has offered or advertised or sold any proprietary price-maintained article at a price above or below the price fixed in the protected list, the council might place the name of that person on a list called the "stop list," and give notice thereof to all members of the association (with an exception in the case of contracts existing at the date of admission of the proprietor to membership); and the council might also place on the "stop list" the name of any person who should supply

proprietary price-maintained articles to, or have any trade relations in regard to those articles with, any person whose name was on the "stop list." Another bye-law provided that no member of the association should supply "price maintained" articles to any person whose name appeared on the "stop list." Plaintiffs were named therein and brought an action claiming an injunction to restrain the defendants from publishing the name of their company in any "stop list" or "black list" or from publishing any libel injuriously affecting them in their business or any statement calculated to prevent any person or firm from dealing with them or from breaking contracts with them. ROWLATT, J., granted an injunction against individual defendants and held that, notwithstanding the prohibition in s. 4 of the Trades Disputes Act, 1906, an injunction would lie against the defendant association. He held, however, that as all the acts complained of happened before writ issued, he ought not to grant an injunction against the association. From this both sides appealed. The Court of Appeal held: (1) As to libel, that in the absence of evidence that the words would be understood in a meaning other than their ordinary meaning, they were not capable of a defamatory meaning; (2) that the publication of the plaintiffs' name in the "stop list" was done by the defendants *bonâ fide* in the protection of trade interests of the members of the association, and therefore was not unlawful, and an injunction should not be granted; and (3) that s. 4 of the Act of 1906, which provides that "an action against a trade union . . . in respect of any tortious act alleged to have been committed by or on behalf of the trade union shall not be entertained by any court"—applies to an action for an injunction to restrain the future commission of a tortious act. The defendant association therefore won all along the line.

From the cases cited—approaching the real issue as they do from different aspects—it is clear that price-maintenance agreements between manufacturer and distributor are fully recognised by the English courts as binding on both parties.

Disclosure of State Documents.

NOTHING, perhaps, is more important in litigation between the subject and the Crown, in order that justice may seem to be done, than that the Crown, through its responsible Ministers, should, when possible and without injuring the interests of the State, give complete discovery of all documents vitally necessary to assist the subject's case. The report of the Crown Proceedings Committee, appointed by the late Lord BIRKENHEAD as Lord Chancellor, in 1921, which was given in the form of a proposed Crown Proceedings Bill, in 1927, provided by s. 20, sub-s. (3), that ". . . nothing in the provisions of this Act shall operate to impose on the Crown or any officer of the Crown any obligation to produce in any Crown proceedings, either to the Court or to any party to the proceedings, any document the production of which would be injurious to the public interest . . ." Sub-section (7) of s. 20 provided that a certificate for the purposes of the section, signed by a Secretary of State or other Minister of the Crown or the permanent or acting head of the Government department concerned, should be final and conclusive. This method of procedure—leaving the issue of disclosure or non-disclosure in official hands—at present obtains, although it is not, perhaps, a practice which whole-heartedly commends itself to the subject-litigant generally. Undoubtedly a far more preferable course, from his point of view, would be to have the ruling of a judge on the question whether or not the disclosure of the documents for which privilege is sought would in fact be prejudicial to the public interest. Dealing with this last point, we said in 72 SOL. J., at p. 478: "Any suggestion for reform of this kind would probably set all the (Government) departments in hostility." However that may be, the Judicial Committee of the Privy Council have recently given a decision, to which reference will presently be made, which emphatically supports this suggested reform.

That State documents are frequently absolutely privileged from production cannot, of course, be disputed, but it is now recognised that the privilege is a narrow one and one most sparingly to be exercised. TAYLOR, in his "Law of Evidence," at p. 940, says that evidence is excluded from motives of public policy, "but the rule of exclusion is applied no further than the attainment of that object requires." In *Attorney-General* v. *Newcastle-upon-Tyne Corporation* [1897] 2 Q.B. 384, RIGBY, L.J., said that he knew that there had always been the utmost care to give to a defendant that discovery which the Crown would have been compelled to give if in the position of a subject, unless there were some plain overruling principle of public interest concerned which could not be disregarded. It has also been pointed out that in view of the increasing extension of State activities into the spheres of trading, business and commerce, the courts, while they must duly safeguard genuine public interests must see to it that the scope of the admitted privilege is not, in such litigation, extended. "Particularly must it be remembered," said Lord BLANESBURGH, recently, "that the fact that production of the documents might in the particular litigation prejudice the Crown's own case or assist that of the other side is no such 'plain overruling principle of public interest' as to justify any claim of privilege." The fact that the documents, if produced, might effect the fortunes of the litigation, was, he added, of itself a compelling reason for their production. "It would derogate from the King's honour," said Baron ATKYNS, in *Pawlett* v. *Attorney-General* (1668), Hardres, 465, "to imagine that what is equity against a common person should not be equity against him."

The object of this article, however, is to deal with the power of the court to call for production of documents for which State privilege is claimed in order to see itself whether the claim is valid. There have been a number of somewhat conflicting rulings on this important question. In *Beatson* v. *Skene* (1860), 5 H. & N. 838, it was held that a judge at *nisi prius* had no power to compel a witness to produce documents connected with affairs of State if their production would be injurious to the public service; and that question must be decided, not by the judge, but by the head of the department having the custody of the documents. That would appear to be an unmistakably clear statement of the position at that date, 1860, but the obvious reason for it is contained in the words of POLLOCK, C.B., in the case. He explained that the inquiry why the publication of a document would be injurious to the public service would have (at that time) to take place in public, and so might do all the mischief which it was proposed to guard against. To-day, of course, the inquiry would be conducted privately by a judge, so that on that ground there would appear to be no reason why a judge should not now examine an alleged privileged document and rule upon it.

In two Scotch cases conflicting views are expressed on this matter. Lord DUNEDIN, in *Admiralty Commissioners* v. *Aberdeen Steam Trawling and Fishing Co.* [1909] S.C. 335, said at p. 340: "It seems to me that if a public department comes forward and says that the production of a document is detrimental to the public service, it is a very strong step indeed for the court to overrule that statement by the department." It is to be observed, however, that he did not say that it *could not be* overruled. He added that he thought that sitting as judges without other assistance they might think that something was innocuous which the better informed officials of the public department might think noxious. In *Henderson* v. *M'Gown* [1916] S.C. 821, however, it was held that the court had power, in the exercise of its discretion, to order production of documents in the custody of a public department, even though that department pleaded public interest as an objection to their production. It is not too much to say that the view in *Henderson's Case* is to some extent

confirmed in practice, and FIELD, J., expressed his ideas in no uncertain language in *Hennessy* v. *Wright*, 32 SOL. J. 591; 21 Q.B.D., 509. "Should the head of a department take such an objection before me at *nisi prius*," he said, at p. 515, "I should consider myself entitled to examine privately the documents to the production of which he objected, and to endeavour by this means and that of questions addressed to him, to ascertain whether the fear of injury to the public service was his real motive in objecting." LINDLEY, M.R., in *Joseph Hargreaves, Ltd.*, 44 SOL. J. 210; [1900] 1 Ch. 347, said that he did not intend to say what was the limit of the power of the court (if there was a limit) to order the production of such documents.

The most recent case on this interesting matter was *Henry Greer Robinson* v. *The State of South Australia*, 75 SOL. J. 458, before the Judicial Committee of the Privy Council, who gave judgment on the 19th May. The appellant's claim was to establish the liability of the respondent State for loss of wheat of the 1916-1917 harvest by exposure to water and to the ravages of mice, while in its custody for the purposes of the wheat marketing scheme. The scheme was instituted under the Wheat Harvest Acts, 1915 to 1917, and the substance of it was that all growers in South Australia had to deliver their wheat to the Government, which assumed the duty of accepting and marketing it and distributing the net proceeds among the growers. The appellant alleged that the loss in question was due to the negligence of the State or its agents. The facts on which the appellant's chance of success depended were mainly in the possession of the respondent State actually responsible for the working of the scheme, and without the assistance of complete discovery from the State the establishment of the necessary facts by the appellant was not practicable. The State objected to the desired disclosure of certain documents on the ground of public policy, and in the result the Supreme Court of South Australia upheld the State's claim of privilege in respect of those particular documents. The question before the Judicial Committee of the Privy Council was whether that claim, without any qualification, was one which in all the circumstances ought to have been accepted. The Board decided to remit the case to the Supreme Court of South Australia with a direction that it was one proper for the exercise of the court's power of inspecting the documents for which privilege was claimed in order to determine whether the facts discoverable by their production would be prejudicial or detrimental to the public welfare in any justifiable sense.

Apart from the authorities cited in support of that procedure, their lordships referred to the express power to that effect conferred by the South Australian Rules of Court, Order 31, r. 14 (2), which is in the same form as Order 31, r. 19A (2) of the Rules of the English Supreme Court, and which provides that where on an application for an order for inspection, privilege is claimed for any document, it shall be lawful for the court or a judge to inspect the document for the purpose of deciding as to the validity of the claim. "Their lordships see no reason," ran the judgment, "why the particular privilege now in question should be excluded from the connotation of the word as there used. They see no reason why in South Australia any more than in England the word should be construed in a narrow sense." In *Ehrmann* v. *Ehrmann*, 40 SOL. J. 635; 1896, 2 Ch. 826, it was held that the word "privilege" in Order 31, r. 19A (2), was not to be construed in a narrow sense so as to exclude the case of an objection to discovery based on the ground of irrelevancy. It included any ground on which inspection was sought to be resisted.

The whole position can be briefly summarised, therefore, by saying that, substantially, the authorities are in favour of a judge, if necessary, exercising in any case, a discretion to inspect privately a document for which privilege is claimed, whereas the Crown Proceedings Committee were of opinion that the Crown or any of its officers should not be obliged to produce to the court documents for which privilege was claimed on the ground of public interest. Lastly, the court is entitled to prescribe in any particular case the manner in which the claim of privilege shall be made if the claim is allowed. Normally, it should be claimed under the sanction of an oath, the oath being that of a responsible Minister of State whose mind has been directed to the question. That was required as a guarantee that the statement and the opinion of the Minister, which the court was asked to accept, was one that had not been expressed inadvisedly or lightly or as a matter of mere departmental routine, but was put forward with the solemnity necessarily attaching to a sworn statement.

"Evesham Custom."

THE country solicitor, and more often the country estate agent, are frequently asked questions by small farmers and market gardeners as to whether they are entitled to avail themselves of the benefit of what is known as "Evesham Custom." Comparatively few practitioners are aware of the importance of this matter, save in the Evesham district where the custom, as its name indicates, obtains generally. In point of fact the custom is not and need not be confined to Worcestershire. It may be employed effectively and usefully in market-gardening tenancy agreements in any part of the country.

The custom is really intended to benefit market gardeners and/or farmers who use part of their holdings for market gardening purposes; and it particularly affects the position of such tenants when notice to quit has been given by a landlord by reason of his tenant being bankrupt or compounding with his creditors. It relates to the incidence of the provisions of ss. 48 and 49 of the Agricultural Holdings Act, 1923, which apply exclusively to holdings in respect of which it has been agreed "by agreement *in writing* made on or after January 1st, 1896, that the holding shall be let or treated as a market garden." Given that proviso in his agreement, the tenant is entitled to much more liberal treatment in regard to "improvements" effected on his holding during his tenancy than are available to the ordinary farmer. For instance, s. 48 provides, *inter alia*, that—

(*a*) the provisions of this Act relating to tenants' property in fixtures and buildings shall extend to every fixture or building affixed or erected by the tenant to or upon the holding, or acquired by him since December 31st, 1900, for the purposes of his trade or business as a market gardener.

(*b*) the tenant may remove all fruit trees and fruit bushes planted by him on the holding and not permanently set out; but if the tenant does not remove such fruit trees and fruit bushes before the termination of his tenancy, they shall remain the property of the landlord, and the tenant shall not be entitled to any compensation in respect thereof.

Now, if we pass on to s. 49, we find it there set out that where a tenant (i.e., an ordinary farming tenant) desires to make any addition in the way of fruit trees, bushes, etc., or to erect or enlarge buildings for the purpose of the trade or business of a market gardener, and the landlord will not consent to agree in writing that the holding *or that part of it* shall be treated as a market garden, the tenant may apply to the Agricultural Committee for the district, and they, after hearing the landlord or his representative, and after being satisfied that the holding or part of the holding is suitable for the purposes of market gardening, may direct that the provisions of s. 48 are to apply to the holding or to that part of it in respect of all or any of the proposed improvements. Then the following consequences will ensue:—

(*a*) if the tenancy is terminated by notice to quit given by the tenant or by reason of the tenant becoming bankrupt or compounding with his creditors, the tenant is to be entitled to compensation for all the improvements specified

if within a month after the date on which the notice to quit is given or the date of the bankruptcy or composition, as the case may be, or such later date as may be agreed, he produces to the landlord an offer in writing by a substantial and otherwise suitable person to accept a tenancy of the holding from the termination of the existing tenancy thereof, and on the terms and conditions of that tenancy so far as applicable, and subject as hereinafter provided to pay to the outgoing tenant all compensation payable under this Act or under the contract of tenancy.

This offer is to hold good for three months. If the landlord refuses to accept it within that time the tenant automatically gets his compensation. If on the other hand, the landlord accepts the offer the new tenant must—

(*b*) pay to the landlord on demand all sums payable to him by the outgoing tenant on the termination of the tenancy in respect of rent or breach of contract or otherwise in respect of the holding, and any amount so paid may, subject to any agreement between the outgoing tenant and the incoming tenant, be deducted by the incoming tenant from any compensation payable by him to the outgoing tenant.

In other words, a tenant who becomes bankrupt or compounds with his creditors need not forfeit all compensation for the improvements he has effected on his holding, but may enter into an arrangement with a "substantial and otherwise suitable" new tenant to take over the holding. In such event the landlord loses nothing, but stands in the same position as he was in before the tenant's finances became involved—in fact he is in a better position because he will have exchanged a financially unstable for a financially sound tenant, who will pay up all arrears of rent. On the other hand the outgoing tenant will get the benefit of his tenant-right valuation on the enlarged basis of s. 48. There is moreover nothing to prevent an arrangement being made (where the landlord is willing) for the "substantial and otherwise suitable" new man to take over immediately if he so desires, which may be advantageous to all concerned.

Such is the Evesham custom. Originally it was practised in the district from which it takes its name, though it was not (and is not) necessarily confined to cases where actual financial difficulty exists. It operates quite apart from that aspect of the matter; but clauses (*a*) and (*b*) of s. 49 (1) now recognise it generally and emphasise its usefulness, and make it applicable upon stated conditions where there actually is a question of bankruptcy or insolvency. "Evesham custom" therefore may operate anywhere. It depends solely upon the embodiment of the terms of s. 48 in the tenancy agreement. There is, of course, no definition of what will satisfy the description of "substantial and otherwise suitable," but that will necessarily be a question of fact, and, having regard to the alternative liability, the average prudent landlord may be trusted to accept any person who can give reasonable references and/or security. Of course that presumes his right to reject any proposed substitute who is not ready and willing to give the necessary assurances.

Company Law and Practice.

LXXXV.

DIRECTORS' MEETINGS.—II.

LAST week we dealt here with questions arising in connexion with the summoning of directors' meetings, and this week it may be of assistance to pursue the matter a little further. So far as company meetings are concerned, it is usual for the articles of association to provide that some indication shall be given of what it is proposed should be done at a meeting. Thus Table A, which may be taken as a fair specimen of the average on this point, provides (Art. 42) that the notice summoning the meeting must, in the case of special business, specify the general nature thereof; while Art. 44 says that all business is to be deemed special that is transacted at an extraordinary meeting, and all transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets and the ordinary report of the directors and auditors, the election of directors and other officers in place of those retiring by rotation, and the fixing of the remuneration of the auditors.

But when we come to directors' meetings, totally different considerations apply. Shareholders owe no duty to anybody except themselves to attend general meetings of a company in which they hold shares, but the directors of a company are in duty bound to attend board meetings if they can, for they are appointed to look after the affairs of a company, and they are, as a rule, paid for so doing. "A director," says A. L. SMITH, L.J., in *La Compagnie de Mayville* v. *Whitley* [1896] 1 Ch. 788, at p. 810, "is bound to go to a meeting of directors if he had notice when the meeting is to take place, whether he knows what business is to be transacted or not; and therefore it is not good law to say that everything which was done by two properly appointed directors who formed a quorum was invalid because the other had not notice of what they were going to do."

As was pointed out in the judgments, a quotation from one of which is given above, a rule to the effect that the nature of any special business to be transacted at a directors' meeting would impose a tremendous handicap on business; and further, it is perhaps not immaterial to remember that new circumstances may arise between the giving of a notice and the holding of a meeting which render it imperative that some decision shall be come to at the meeting, and yet which arise too late for any further intimation as to the business to be transacted to be communicated to the board, or, at any rate, to all the members thereof.

The case of *Re Homer District Consolidated Gold Mines*, 39 Ch.D. 546, referred to in this column last week in connexion with length of notice, contains some references to the giving of information as to the business to be transacted, but, though it might have been argued from that case that notice of the business must be given, LINDLEY, L.J., in his judgment in *La Compagnie de Mayville* v. *Whitley*, *supra*, at pp. 798, 799, shows it is not an authority for that proposition. But there are *dicta* in *Young* v. *Ladies Imperial Club* [1920] 2 K.B. 523, which suggest that the rule laid down in *La Compagnie de Mayville* v. *Whitley* is one which has no application outside its application to directors' meetings. The *Ladies Imperial Club Case* was one dealing with a meeting of an executive committee of a club, and not with the board of directors of a company registered under the Companies Acts; the business proposed to be transacted was to consider the expulsion or suspension of a member, while the notice only referred to the business as being "to report on and discuss the matters concerning" the two members concerned. Lord STERNDALE expressed the view that conveners of meetings of this nature would be well advised to give better notice, while WARRINGTON, L.J., stated that to his mind the notice was not a sufficient one. It does not appear, however, that anything in this case, dealing as it does with a different subject-matter entirely, can be said to affect the decision in *La Compagnie de Mayville* v. *Whitley*, *supra*.

It may at first sight seem rather strange that it should have been necessary to decide whether the directors may, at their meetings, transact their business in any order they please, but the point did actually come up for decision in *Re Cawley & Co.*, 42 Ch.D. 209, when it was decided that they could. The agenda paper for a board meeting set out the business in an order different from that in which the business was in fact taken; the order was material in this way, that the two material operations were the making of calls on certain shares and the passing of various transfers, which included transfers of some of the shares on which calls were to

be made. Notwithstanding that the passing of transfers was the first business on the agenda, the majority of the directors decided that the making of calls should be first considered. This was done, and a call was made, and the board then refused to pass the transfers on the ground that they had been made in order to escape calls. The rest of the case does not call for comment here, but it was held by CHITTY, J., that the directors had the right to direct in what order their business should be taken.

(*To be continued.*)

A Conveyancer's Diary.

Effect of Endorsements on Probates.

In a letter published in another column Mr. E. T. Hargraves raises a question of some interest and importance. I do not think that I have dealt with the question before in this column, but it is one that has been much discussed in the profession, and I think there may be divergent views upon it.

The matter to be considered is: What is the effect of an endorsement upon a probate or letters of administration of a notice of a conveyance or assent? And, of course, what are the consequences of a failure to have such an endorsement made?

Mr. Hargraves asks whether he would be safe in accepting a statement in writing by a personal representative that no previous assent or conveyance had been given or made in respect of a legal estate where he had not ascertained, by inspection, that the probate or letters of administration under which the assent or conveyance was given or made does not bear any endorsement in respect of the property with which he is concerned.

In order to provide an answer to this question we must refer to the pertinent provisions in the A.E.A., 1925, and consider them somewhat closely.

First, take s. 36 (5):—

> "Any person in whose favour an assent or conveyance of a legal estate is made by a personal representative may require that notice of the assent or conveyance be written or endorsed on or permanently annexed to the probate or letters of administration, at the cost of the estate of the deceased, and that the probate or letters of administration be produced, at the like cost, to prove that the notice has been placed thereon or annexed thereto."

That seems plain enough, but it does not carry us very far. All that the sub-section amounts to is that any person in whose favour an assent or conveyance has been given or made may require notice of it to be endorsed upon or annexed to the probate or letters of administration. The sub-section does not say anything about the effect of such a notice, nor make any provision regarding the effect of neglect to have the notice endorsed or annexed. Something of the kind may have been intended, but it is certainly not enacted.

I may, perhaps, pause here to say that if it had been the intention of the Legislature to make assents or conveyances from personal representatives take priority in accordance with notices endorsed upon or annexed to probates or letters of administration it would seem that there should also have been some method of recording such notices otherwise than upon a document which remains in the hands of private individuals who may be careless in the keeping of it or neglectful in producing it, and under no liability to do either the one or the other. It might also be that a personal representative who had been most punctilious with regard to the making of all required endorsements had been so careful to preserve the probate or letters of administration as to keep it in his own possession and take it with him wherever he went, so that anyone who wished to see it might have to chase him all over the globe and perhaps never succeed in catching up with him.

Now turn to sub-s. (6), which is rather troublesome:—

> "A statement in writing by a personal representative that he has not given or made an assent or conveyance in respect of a legal estate, shall, in favour of a purchaser, but without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative, be sufficient evidence that an assent or conveyance has not been given or made in respect of the legal estate to which the statement relates, unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration.
>
> "A conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of such a statement shall (without prejudice as aforesaid and unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration) operate to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been made by the personal representative."

This is really an extraordinary enactment. Whatever it was intended to mean, it appears to be quite clear that a statement by a personal representative that he has not given or made any assent or conveyance does not protect a purchaser from him against any previous purchaser, even though the later purchaser may cause a notice of his assent or conveyance to be endorsed and the former purchaser has failed to do so.

The answer to Mr. Hargrave's question is, therefore, that a purchaser taking under an assent or conveyance not recorded by endorsement or annexation of notice thereof on or to the probate or letters of administration would be entitled to priority over a subsequent purchaser who purchased relying upon a statement that no previous assent or conveyance had been given or made, even though the latter had caused a notice of his conveyance to be endorsed or annexed to the probate or administration.

Suppose that an executor convey to a purchaser, A, who does not have any notice endorsed on or annexed to the probate, and then the executor conveys to B, stating that he has not previously given or made any assent or conveyance, and B duly has a notice endorsed or annexed. I do not see, having regard to the saving words in sub-s. (6) ("without prejudice to any previous disposition made in favour of another purchaser") how B could claim priority to A.

If the quotation from "Goodeve & Potter's Modern Law of Real Property," referred to by Mr. Hargraves, is intended to imply that in such a case B would have priority over A, all I can say is that I do not agree with it.

These sub-sections of s. 36 of the A.E.A. appear to be a singularly futile effort to create a sort of private register of assents or conveyances given or made by personal representatives. Perhaps in the first place the saving words to which I have referred were not in the draft, and it occurred to the draftsman as an afterthought that they ought to be inserted for reasons such as those which I have indicated. However, that may be, the words are there and rob the sub-section of its effectiveness so far as I can see. Perhaps there is some advantage to be gained by a devisee or purchaser having the right to insist upon endorsements being made, but in the great majority of cases it would be unnecessary, because it would seldom happen that a personal representative would seek to vest the same property twice, and very rarely would he be able to "get away with it" if he did, at any rate so far as a purchaser from him is concerned. Presumably, however, it was in order to prevent fraud or mistake of that kind that sub-ss. (5) and (6) were enacted. If so, the sub-sections are a monument of futility. If not, they will be thought by most of us to be equally so.

I like the clause at the end of sub-s. (6). It is worth repeating—

"A personal representative making a false statement in regard to any such matter shall be liable in like manner as if the statement had been contained in a statutory declaration."

What a deterrent to a personal representative who proposes to commit a fraud!

Landlord and Tenant Notebook.

Covenants expressed in Recitals.

The question whether any particular form or words was or were essential for a covenant appears to have come before the courts as long ago as 1588, when in *Severn* v. *Clerk*, 1 Leon. 122, it appeared that an assignment of leaseholds commenced with a recital: "Whereas . . . is possessed of . . . for . . ." It was argued that in effect this meant: "I agree that I am possessed of . . . ," and the court held that, if in fact the assignor had not the estate, the obligation was forfeited.

The above case deals with a covenant for title, i.e., an undertaking that a certain state of affairs existed. Since then there have been numerous decisions by which covenants to do or refrain from doing certain things have been held to have been created by words used in recitals, in reservations, and in other parts of a lease where covenants are not usually looked for. Some of the authorities lay more stress on "manifest intention," others on words expressing a promise; equal importance appears to have been attached to both features in the classical example of the refreshment rooms at Swindon Station, *Rigby* v. *G.W.R. Co.* (1845), 14 M. & W. 811. The question at issue was whether the railway company were under a covenant to make all ordinary trains passing through Swindon stop there, and in the agreement for a lease to the plaintiff it appeared that they had first "declared" that such was their "intention," and later on "engaged not to do any act which should have an effect contrary to the above intention." On this, judgment was given against the company; and that in spite of the fact that the document did contain a series of covenants in the usual place, which provided for the completion of the structure, its repair, the orderly conduct of the business and the fixing of charges.

Even a positive covenant has been spelled out of a recital; in *Sampson* v. *Easterby* (1829), 9 B. & C. 505, the lease recited an agreement to demise mines and minerals, the fact that the tenants (the defendants) had taken possession, the demolition by them of a smelting mill, with the lessors' (of whom the plaintiff was one) permission, and that the defendant "did engage" to erect, at his own expense, a larger mill. The operative words and the parcels followed, the latter specifying both mines and mills; and the *right* to build mills generally was mentioned. The tenants' covenants included one to repair the said smelting mill engaged to be erected by them. The action was for breach of covenant in failing to erect a mill; and it was held that the effect of the recital combined with that of the repairing covenant was to make the defendant liable.

For authorities showing the limits of the rule of construction it is convenient to cite one or two cases outside the sphere of Landlord and Tenant. A note of warning was sounded by Williams, J., in *Farrall* v. *Hilditch* (1859), 5 C.B. (N.S.) 840, which arose out of the terms of settlement of another action. Among the numerous recitals was one mentioning that it had been agreed that judgment should be signed but no execution issue until certain events should happen. This was not repeated elsewhere in the deed. The learned judge considered that in the circumstances "has been agreed" should be construed as "is agreed," and given effect to accordingly; but he also said "A court ought to be cautious in spelling a covenant out of a recital in a deed." In *Courtney* v. *Taylor* (1843), 6 M. & G. 851, the seventh of twelve lengthy recitals contained a statement "That there was due from —— the sum of . . .," the other recitals setting forth a number of transactions such as marriage settlements, deaths, payment off, etc.; in an action for debt based on the statement mentioned, Tindal, J., pointed out that an intention to execute a covenant, if apparent, sufficed without express words; but in this case no such intention could be gathered from the deed. And Maule, J., considered that while an unequivocal admission of liability to pay money might enable a court to imply a covenant, if the deed set out the instrument under which the liability arose, there was no need to imply.

A suitably drawn recital might have helped the appellant in *Re Cadogan and Hans Place Estate Ltd., Ex parte Willis* (1895), 73 L.T. 387, C.A. His claim against the liquidator arose out of a building agreement (with plan annexed) under which, *inter alia*, he was to pave some mews at the back of the houses he was to build. He was then to be granted the usual leases. When the agreement was made, plans had been approved by the local authorities, and if they had been carried out the tenant would have been able to hand over the entrance to completed mews to the authority. But, owing to the fact that a small portion of the land, shown in the agreement but not in a subsequent lease, did not belong to the estate, the builder had to make the entrance narrower than was intended, and the vestry refused to take it over. As a consequence, he was liable to repair it for the ninety-nine years of his lease, and in respect of this liability he now sought to prove against the liquidator. In the High Court he succeeded, the judge holding that the agreement implied an obligation to acquire the land; the decision was, however, reversed on appeal, the court holding that there was nothing in the document which could be construed as a covenant to such effect.

Our County Court Letter.

LIABILITIES AND RIGHTS OF DOG OWNERS.

(*Continued from* 75 Sol. J. 245.)

II.

In *Marsh* v. *Pullin*, recently heard at Stafford County Court, the claim was for £8 10s. in respect of sheep worrying by the defendant's dog. The latter had been seen by the plaintiff chasing his sheep, and (as he recognised the animal in consequence of previous trouble) he shot at and "spotted" it. Three ewes afterwards cast dead lambs, but the defendant's case was that (1) his dog never attacked the sheep and was not in the field; (2) the sheep were not worried on the date in question. His Honour Judge Ruegg, K.C., pointed out that, while it was unnecessary to establish the second point, dogs were not usually fired at (if they were doing no harm), but the defendant contended that the plaintiff only fired to shoot or scare birds. The defendant's wife stated that the dog had been near the house, where there were no sheep, and had then entered the woodside, whereupon she heard a shot and a cry from the dog. It was further pointed out that the plaintiff only complained of damage to sheep after he received a claim for injury to the defendant's dog. Another farmer gave evidence, however, that he saw the defendant's dog chasing the plaintiff's sheep (on the date in question), and judgment was given for the plaintiff, with costs.

In *Gill* v. *Frampton* recently heard at West London County Court, the claim was for damages for breach of warranty on the sale of a Pekinese pup, or alternatively, for £3 13s. 6d., as money paid upon a consideration which had failed. The plaintiff's case was that, in reliance upon the kennel-maid's guarantee, she had bought the dog, but its legs became deformed and it was unable to walk. The defence was a denial of any guarantee, but the learned registrar intimated that he was satisfied as to the breach of warranty and proposed to give

judgment for the amount claimed—on the dog being returned to the defendant. It was pointed out for the plaintiff, however, that the claim was for breach of warranty (and not for rescission of a contract), so that she was entitled to an unconditional judgment. The defendant objected that this would enable the plaintiff not only to have the money but also to keep the dog. This proposition was nevertheless held to be good in law, and judgment was therefore given for the amount claimed, with costs (no order being made as to the return of the dog) and the defendant gave notice of appeal.

SOLICITORS' RIGHTS AND LIABILITIES.

(*Continued from* 75 Sol. J. 113.)

II.

In *Midland Bank Ltd.* v. *Chambers; Porter and Pearce, third parties*, recently heard at Sheffield County Court, the claim was for £45 10s. 7d., being money advanced upon overdraft. The defendant's case was that he was not indebted, and that the amount (if any) was owing by the third parties, in the following circumstances: (1) in 1922 the defendant's former partner was dealing with the affairs of the Mineral Products Syndicate, in which the third parties were interested; (2) in 1923 the account was opened for dealing with sundry expenses of the syndicate, in order to avoid the need for the defendant's firm to apply to their clients for occasional cheques; (3) the account had become dormant since 1924, and the defendant had accounted for £324, viz., the whole of the money of the third parties in his possession. His Honour Judge Greene, K.C., observed that (*a*) the defendant's firm had acted, not only as solicitors, but for the general business purposes of their clients; (*b*) there was no evidence that the account was opened at the express request of the third parties, or under their implied agreement to indemnify the defendant's firm; (*c*) the latter had operated the account on behalf of a third party, and had properly used their clients' money for the clients' purposes, but that did not affect the claim. Judgment was therefore given for the plaintiffs, with costs, and the third parties were dismissed from the action, with costs, but without prejudice to any separate claim the defendant might make against them.

Practice Notes.

MOTOR ACCIDENTS AND ROAD REPAIRS.

In *Deane* v. *Staffordshire County Council*, recently heard at Stafford County Court, the claim was for £56 in respect of injuries to a motor cyclist, who had collided with a heap of tar macadam on the roadside. The plaintiff had passed the spot on the previous night, when there were no heaps of tarmac, and (by reason of fog at the time of the accident) he was proceeding at a moderate speed of about 15 m.p.h. Corroborative evidence was given that there were no warning boards or lamps, and that the plaintiff was unable to avoid the obstruction, which he only saw at five yards' distance. It transpired that, earlier in the morning, the council's workmen had tipped a series of lines of tarmac across half the width of the road, the heaps varying from 5 inches to 1 foot 9 inches in height. The defence was that, acting under the Highway Acts and the Local Government Acts, 1888 and 1929, the defendants were carrying out road repairs in a proper manner and with sufficient warning notices, their evidence being that (*a*) the plaintiff was seen from over 40 yards away, and that his speed was 30 m.p.h., as shown by the fact that he turned a double somersault and came to rest 52 yards further on, (*b*) proper warning boards were also out, but there were no red lamps, as there was only slight fog. His Honour Judge Ruegg, K.C., held that insufficient warning had been given of the obstruction, and, as the defendants' servants had been negligent, judgment was given for the plaintiff for £45 and costs. See further a "Practice Note," under the above title, which appeared in our issue of the 6th September, 1930 (74 Sol. J. 592), and prior references.

THE CONTRACTS OF TURF COMMISSION AGENTS.

In *Bailey* v. *Harris*, recently heard at Honiton County Court, the claim was for the amount of two cheques for £48 and £51, drawn in January, 1920, by the plaintiff in favour of the defendant. The parties had had betting transactions, under which the defendant owed the plaintiff £126, but a dispute having occurred in 1921, the transactions ceased and the defendant had refused or neglected to pay. The plaintiff, therefore, claimed to recover the amounts of the above cheques (which represented winnings paid to the defendant in respect of transactions prior to the dispute) but the defendant pleaded that the claim was statute-barred, otherwise the defendant was equally entitled to recover the amounts of his own cheques paid to the plaintiff. The case for the plaintiff was that under the Gaming Act, 1835, s. 2, the amounts were recoverable within twenty (and not six) years, and His Honour Judge The Hon. W. B. Lindley, observed that, although it was not desirable to encourage such actions, the plaintiff was in law entitled to succeed. Judgment was given accordingly, with costs—the inference being that the transactions between the parties can be re-opened as far back as 1911.

This decision followed *Cohen* v. *Hall* [1922] 2 K.B. 37, in which the claim was for £477 10s. as the amount of cheques paid by the plaintiff to the defendant two years before the date of the writ. The case was fought on the issue of whether the above section raised an implied promise, which was null and void under the Gaming Act, 1892, s. 1, and Mr. Justice Roche (having decided against this contention) gave judgment for the plaintiff. This was upheld in the Court of Appeal by Lord Sterndale, M.R., the present Lord Warrington and Lord Justice Scrutton, who pointed out that the Gaming Act, 1835, s. 1, created a statutory debt, which was the highest form of speciality, i.e., one not statute-barred for twenty years, although attention was not drawn to this circumstance in the judgments.

It is to be noted that the Gaming Act, 1835, s. 2, has been repealed by the Gaming Act, 1922, s. 1, but the claim in the first-named case (*supra*) was rendered possible by *Bowling* v. *Camp* (1922), 39 T.L.R. 31. Mr. Justice McCardie there held that fresh actions might be commenced in respect of claims which had actually arisen before the 20th July, 1922. Compare "Fresh Considerations in Gaming Transactions," which appeared in our issue of the 16th August, 1930 (74 Sol. J. 546).

Books Received.

Notable Trials. The Trial of Alfred Arthur Rouse. Edited by Helena Normanton, B.A., Barrister-at-Law, and of the Central Criminal Court. 1931. Demy 8vo. pp. x and 316. Edinburgh and London: William Hodge & Co., Ltd. 10s. 6d. net.

The Law of Negotiable Instruments. F. Raleigh Batt, LL.B., Barrister-at-Law, Professor of Commercial Law in the University of Liverpool. Crown 8vo. pp. xx and (with Index) 156. 1931. London: Longmans, Green & Co. 5s. net.

A Review of the Effects of Alcohol on Man. Demy 8vo. 300 pp. 1931. London: Victor Gollancz, Ltd. 8s. 6d. net.

May it Please the Court. James M. Beck, LL.D., D.Litt., formerly Solicitor-General of the United States, Hon. Bencher of Gray's Inn. Edited by O. R. McGuire, A.M., S.J.D. of the Virginia Bar. 1930. Medium 8vo. pp. xx and (with Index) 511. New York; The Macmillan Co. 21s. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Construction of Dog-breeding Agreement.

Q. 2239. A gave a greyhound bitch to B upon the following terms: (1) that the bitch should be the absolute property of B; (2) that B should mate her to a stud dog at his own expense; (3) that A was to have the pick of the litter; (4) that B was to rear the puppy until another litter came or until the puppy was four months old. A alleged that B did not intend to mate the bitch and accordingly came and took her away. B is now suing A for the return of the bitch. A is filing a defence that by reason of B neglecting or refusing to take any steps to arrange for the bitch to be mated, that he committed a breach going to the root . . . of the whole agreement, and as such, has entitled A to rescind same. A has since mated the bitch and he is now claiming by way of counter-claim the stud fees, the railway charges for sending the bitch away and the feeding and keeping of the bitch from the date of taking her away up to the date of the hearing of the action. It is contended that if A has any complaint (which is not admitted) that his only remedy is in damages, and he is not entitled to retain the bitch. Will you please let us know (1) if A can rescind the contract and keep the bitch; (2) is it possible to take back subject-matter of a gift under the circumstances; (3) assuming that A is correct in saying that B did not intend to mate the bitch (which is not admitted) would the damages claimed by him be too remote as it would appear that it was his intention to mate the bitch in any event; (4) will you please quote any relevant cases.

A. It is not stated whether the four terms of the agreement were set out in writing, and, if not, there is a likelihood of a conflict of evidence, as A will probably deny that (*a*) the bitch should be the absolute property of B, or (*b*) the transaction was a gift. The consideration for the agreement is set out in the terms numbered (2), (3) and (4), and this has apparently failed by reason of B not having mated the bitch within a reasonable period. As the contract had not been completed, the parties could be restored to their original positions, and A was entitled to rescind the agreement by resuming possession of the bitch. Even if it be held that there was a gift to B, the conditions were not repugnant to its absolute nature, as there was no restraint on alienation and no illegal proviso. Damages might be an inadequate remedy for A, owing to some special quality in the bitch which would not be reproduced in the progeny of any other bitch obtained in substitution. The opinion is therefore given that: (1) A was entitled to rescind the contract and keep the bitch; (2) the subject-matter of a gift may be taken back on breach of a condition subsequent, if not repugnant or illegal, as the completion of the donee's title is dependent upon the performance of the condition; (3) the damages are not too remote, as A's object was to save the expenses now claimed—this being part of the consideration; (4) no relevant cases are reported.

The Liabilities of Successive Receivers.

Q. 2240. The debenture-holders of a company appointed a receiver some ten years ago, and there was subsequently appointed a second receiver in his place. A third receiver has recently been appointed, and the services of the second receiver have been dispensed with. The instrument (debentures) under which the receivers have been appointed definitely states that the receiver is the agent of the company. The point arises, will the present (third) receiver be under any compulsory obligation to pay the debts and trading losses of the former receiver or receivers, which debts and losses were contracted during the period of their office in their capacity of receivers and managers.

A. The opinion is given that no receiver is liable for the past debts and losses of his predecessors, as, even if the latter incurred personal liability, this does not attach to their successors. At first sight this may facilitate unscrupulous trading, if (on losses being incurred) the debenture-holders can remove a receiver and appoint another who starts without any load of debt. The hardship upon creditors, however, is more apparent than real, as every receiver will normally emphasise his position, and credit is obviously given to an insolvent company. If the receiver, however, happens to incur personal liability, the creditors have their remedy against him personally, even after his appointment has terminated. It is assumed that the losses relate to past transactions, and not to unprofitable current contracts, as to which see *In re Newdigate Colliery Limited* [1912] 1 Ch. 468, and *Parsons* v. *Sovereign Bank of Canada* [1913] A.C. 160.

Purchase by a Trader of Property in Names of Wife and Child —Protection from Bankruptcy.

Q. 2241. I have been instructed by a client who carries on a retail trade in this city and who is about to purchase a substantial block of business premises. He carries on business under his own name and is anxious that so far as possible the property now contracted to be purchased should be protected from creditors in the event of possible financial misfortune. My client has a wife and two children who are of age and three other children who are under age. He suggests that the conveyance should be taken in the joint names of himself and two elder children, or in the alternative in the names of himself and his wife, or in the names of his wife and children alone. Will you please be good enough to let me have your suggestions with regard to the method of taking a conveyance so that whilst my client is protected in the event of future financial difficulties he at the same time will, *if possible*, have some measure of interest or control as to the disposal and management of the property and if this latter requirement is impossible then please let me have what other suggestions you think will meet with the case.

A. If the circumstances are such as to show an intent to defraud creditors the conveyance is voidable at any distance of time, see s. 172 L.P.A., 1925, and the fact that the trader reserved control of the property would be evidence of fraud. The provisions of s. 42 of the Bankruptcy Act, 1914, as to avoidance of voluntary settlements must be borne in mind. It is presumed the trader wishes to occupy the premises. The best suggestion that can be made is that there should be a conveyance to the wife and two children upon trust for sale and by contemporaneous deed reciting that the trader provided the purchase money and desired to make some provision for his wife and family a settlement should be made on the wife and children of the marriage. The deed might provide that it was one of the terms that the trustees should grant a lease to the husband at a rent fixed by valuation. Such a lease might be granted. It should be seen that the husband's properly audited balance sheet shows that he is able to pay his debts without the aid of the property and the rent, if it is let to him, must be regularly paid. The suggested documents make the procedure a little costly, and it is for the husband to say if it is worth while incurring the expense.

Correspondence.

Assents by Personal Representatives.

Sir,—I should be much obliged if the conveyancing gentleman will answer this query on s. 36 (6) of the Ad. of E. Act, 1925.

I have been reading "Goodeve & Potter's Modern Law of Real Property," edition October, 1928, and on p. 603 I find the following statement:—

> "In view of the fact that a purchaser from a personal representative could override the assent if he acted upon a written statement of the personal representative that no assent had been given and there was no notice of it endorsed it would seem probable that in practically all cases production of probate will be a sufficient link in the title though perhaps not to be relied upon."

What I want to know is whether I should be safe as a purchaser in accepting a statement in writing by a personal representative that he had not given or made an assent or conveyance in respect of a legal estate where I had not ascertained by inspection that the probate or letters of administration under which the assent of the personal representative is given does not bear any endorsement in respect of the estate with which I am concerned. My difficulty is whether a previous assent not followed by a record endorsed or permanently annexed to the probate or letters of administration would take precedence of the statement in writing which I obtain on my purchase. I should also like his advice on the quotation from "Goodeve & Potter."

Coleman-street, E.C.2. E. T. Hargraves.
8th June.

Cost of Litigation.

Sir,—Referring to the reports of the Bar Council and The Law Society upon this subject, both of which were quoted at length in *The Times* of 24th inst., what Sir Arthur Colefax, K.C., described in *The Times* nearly a year ago as "the very great importance of the subject," moves me to offer a few observations.

The present high cost of litigation is attributable to several reasons, of which the following appear to me to be the most outstanding: (*a*) the division of the legal profession into two branches; (*b*) the high scale of fees demanded by counsel; and (*c*) the need for alteration in the forms of procedure.

With regard to (*a*), although I am in favour of a fusion of the two branches of the profession, I feel that opinion as to the desirability of such a change is so keenly divided (and justifiably so) that it is well that all efforts shall be concentrated upon dealing with the other causes of expense.

Generally speaking, the heaviest items in a bill of costs in litigation are those which relate to the employment of counsel, both in interlocutory matters and the brief on trial. The blame for this state of affairs rests partly with solicitors and partly with clients. There are many applications in interlocutory matters upon which counsel are employed quite unnecessarily, and if the Masters in Chambers who hear those applications would withhold certificates for counsel, except in cases where they were obviously justified, the result would be that the expense would fall only on parties who could afford to pay counsel on every application or it would result in solicitors attending interlocutory applications themselves.

There is another matter in regard to counsel which seems to require attention. I refer to the fact that in actions of a most paltry character, the fees of two counsel are allowed as a matter of course. At times when one sees the humble sphere in life to which the litigants belong, one wonders how they afford the luxury of leading counsel. In my view, the Master, on hearing the summons for directions, should be asked to certify for the fitness of the case for the employment of leading counsel, and unless he did so the employment of leading counsel by either party should be at his own expense, and that solicitors should only be able to justify that expense in the bill of costs as between solicitor and client if they had advised their clients in writing and obtained instructions to employ a leader, notwithstanding that the Master had refused his certificate. This course need not prevent the single counsel employed from receiving adequate fees fixed upon the footing that his personal attendance during the whole trial would be necessary.

In regard to (*c*), i.e., the need for alteration in the forms of procedure, in one respect we certainly might emulate the Colonies. In Canada there is a system of oral discovery which takes place immediately after pleadings are closed. Each party may be ordered to attend for oral examination by his opponent, and on that occasion each side obtains valuable admissions of documents, of formal facts, and of matters of general knowledge which obviate the necessity for interviewing witnesses, preparing their proofs, serving them with subpœnas, and paying them conduct money for travelling and remuneration for attendance at a trial. It saves the time occupied in examination of witnesses in court. It is quite true that our procedure provides for service of notices to admit facts and documents, but the former has fallen into desuetude because the admission of facts cannot be enforced except by documentary interrogatories. Obviously, if each side has an opportunity of orally examining his opponent before the trial the real point would emerge for the court to try. Another important result would be that the court would be occupied for a much smaller time upon each case and thus the volume of cases which could be dealt with in a term would be proportionately greater.

There is another cause of avoidable expense in practice. I refer to the attendance of witnesses at court for days before a case is reached (but which is, nevertheless, in the daily list for trial), and also during the time the case is being tried but before some of the witnesses' evidence is required. There appears to be such a great fear that a judge may find himself unoccupied for some part of the day owing to cases which have to come before him being settled or breaking down, but surely, in such event, that judge can usefully occupy his time in relieving another judge of a part of his list. Even assuming that a judge did become unoccupied for some part of the day, surely it would be better so, than that the lists should be overloaded and a number of people, consisting of parties, witnesses and solicitors, should be kept on tenter-hooks or waiting about the court day after day before the case was commenced.

In conclusion, I should like to say a word on the subject of an assessor sitting with the judge. One often has cases where technical knowledge is so essential that an arbitrator possessed of the requisite knowledge of the particular subject is suggested. Now it is very difficult to refuse to agree to such a tribunal, but people of experience will bear me out that it is very dangerous to appoint a lay arbitrator who knows nothing of the rules of evidence. In scientific cases it would appear that a judge sitting with an assessor having the requisite technical knowledge would be the right tribunal, but better still, the arrangement suggested by Sir Francis Newbolt, K.C., that only one expert witness should be called, and that he should be nominated by the judge or the president of some appropriate institute, and that the judge should examine the expert witness and each side should be at liberty to cross-examine him.

Moorgate, E.C.2. Reginald Vaughan.
30th June.

MIDLAND BANK LIMITED.

The directors of the Midland Bank Limited announce an interim dividend for the half-year ended 30th June last at the rate of 16 per cent. per annum, less income tax, payable on 15th July next.

Notes of Cases.

Judicial Committee of the Privy Council.

Henry Greer Robinson *v.* **The State of South Australia.**

Lord Blanesburgh, Lord Warrington of Clyffe, Lord Atkin, Lord Thankerton, and Lord Russell of Killowen. 19th May.

PRACTICE—SOUTH AUSTRALIA—ACTION AGAINST STATE—CLAIM TO PRIVILEGE FOR DOCUMENTS—VITAL TO PLAINTIFF'S CASE—COURT'S POWER OF INSPECTION.

Appeal from the Supreme Court of South Australia.

In this action the appellant sought to establish the liability of the Respondent State for loss of wheat of the 1916-17 harvest by exposure to water and to the ravages of mice, while in its custody, or that of its agents, for the purposes of the Wheat Marketing Scheme established under the Wheat Harvest Acts, 1915-17, on the footing that such loss was attributable to negligence on the part of such agents. The facts on which the success of the plaintiff's case depended were mainly in the possession of the Respondent State responsible for working the scheme, and without the assistance of complete discovery from the State, the establishment of the necessary facts by the plaintiff was not practicable. The State claimed privilege for certain documents, the disclosure of which, it was alleged, would be contrary to public policy and the interests of the State. The question involved in the present appeal was whether the claim of privilege, which was upheld by the High Court of Australia, was really justifiable.

Lord BLANESBURGH, giving the judgment of the Board, said that it was now recognised that the privilege claimed was a narrow one, most sparingly to be exercised. Where, as in the present case, the State was not only sued as defendant under the authority of statute, but was bound to give discovery, the preferable course seemed to their lordships to be to remit the case to the Supreme Court of South Australia with a direction that it was a proper one for the exercise by that court of its power of itself inspecting the documents for which privilege was claimed, in order to see whether the claim was justified. Such power was conferred on the court in express terms under the South Australian Rules of Court, Ord. 31, r. 14, sub-r. 2, which was in the same form as Ord. 31, r. 19A (2) of the Rules of the English Supreme Court. "Their lordships need hardly add, that the judge in giving his decision as to any document will be careful to safeguard the interest of the State, and will not in any case of doubt resolve the doubt against the State without further inquiry from the Minister." Case remitted with a direction to the above effect.

COUNSEL: *Wilfrid Greene*, K.C., and *J. H. Stamp*, for the appellant; *Sir F. B. Merriman*, K.C., and *Sir Robert Aske*, for the Respondent State.

SOLICITORS: *Blyth, Dutton, Hartley & Blyth; Sutton, Ommanney & Oliver.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Re **Veale's Will and Codicils: Malone** *v.* **James.**

Bennett, J. 4th June.

WILL—POWER OF APPOINTMENT—JOINTURE—"FREE OF ALL TAXES AND INCUMBRANCES"—SUR-TAX.

By his will dated the 22nd November, 1865, William Veale devised hereditaments in trust for his nephew, Sir Augustine FitzGerald for life and after his decease for his sons in tail male. In default of issue, the property was to be held in trust for certain other persons. The will also provided that every person who became a tenant for life might appoint an annual sum to be paid to his wife by way of jointure, such sum not to "exceed £300 a year free and clear of all taxes and incumbrances whatsoever." The testator died, and by a deed poll dated the 10th February, 1893, George Cumming FitzGerald being then tenant for life of the hereditaments devised by the will and in exercise of his power thereunder, appointed a jointure of £300 a year to his wife, Ellen Creagh FitzGerald, "free and clear of all taxes and incumbrances whatsoever." She survived him and subsequently married Colonel Richard James. She has an income which has attracted super-tax and sur-tax.

BENNETT, J., in giving judgment, said that it was settled that when a testator gave an annuity free of income tax, without saying any more the expression included super-tax or sur-tax. But in this case, the will did not refer to income tax. It gave the person entitled to the jointure a charge upon the land for a sum of £300 "free and clear of all taxes and incumbrances whatsoever." This meant taxes and incumbrances imposed on the land or the income of the land out of which the jointure was payable. The direction in the will was not intended to impose on the land or the person in possession of it a tax imposed on the jointress herself or created by her. The deed of appointment followed the words of the will and must be similarly construed. Therefore, while income tax at the standard rate could not be deducted from the sum payable to Mrs. James, sur-tax attributable to such sum must be paid by her.

COUNSEL: *Jenkins*, K.C., and *Braund*; *Archer*, K.C., and *Grant*; *Cyril King*; *Roope Reeve.*

SOLICITORS: *Gregory, Rowcliffe & Co.*, for *Bond, Pearce, Thomson and Pearce*, of Plymouth; *Robbins, Olivey & Lake*, for *Grylls and Paige*, of Redruth.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re **Woods (Bristol), Limited.**

Eve and Maugham, JJ. 9th June.

SECTION 269, COMPANIES ACT, 1929—"COSTS OF THE EXECUTION"—WRIT OF *fi. fa.*—BANKRUPTCY ACTS.

Textiles Français, Ltd., were the execution creditors of Woods (Bristol), Ltd., from whom they had recovered judgment on the 30th September, 1930, the writ of *fi. fa.* being issued on the 31st October, 1930. In November, before execution was complete, winding-up was ordered. The learned county court judge refused to order payment to the creditors of the £2 2s. costs of issuing the writ of execution.

EVE, J., in dismissing the appeal, said that the question was whether these costs were "costs of the execution" within s. 269 of the Companies Act, 1929. His Lordship cited s. 41 (2) of the Bankruptcy Act, 1914, in which occurred the words "his costs of the execution," s. 11 of the Bankruptcy Act, 1890, and *In re H. T. Rogers* [1911] 1 K.B. 641. He was of opinion that s. 269 (2) limited the costs which could be retained to costs incurred by the sheriff and excluded those incurred by the creditor.

MAUGHAM, J., agreed.

COUNSEL: *A. E. Woodgate*; *Roland Burrows.*

SOLICITORS: *F. W. Perkins*; *The Solicitor to the Board of Trade.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Skinner *v.* **Geary.**

Talbot and Finlay, JJ. 27th April.

LANDLORD AND TENANT—PREMISES WITHIN RENT RESTRICTIONS ACTS—TENANT NOT IN POSSESSION—RELATIVES OCCUPYING BY PERMISSION—LANDLORD'S CLAIM TO POSSESSION—TENANT NOT PROTECTED.

Appeal from Croydon County Court.

The plaintiff, Alice Mary Skinner, claimed from Edward Geary possession of a dwelling-house and premises within the Rent Restrictions Acts, No. 26, Oxford-road, Upper Norwood, Surrey. The defendant was a weekly tenant

of the premises at 10s. a week, and he pleaded that he was entitled to retain possession of the premises by virtue of the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925. After his father's death, the defendant had been for some years before 1919 the tenant and occupier of the premises in question. In 1919, however, he went to live at a house in Tatsfield, Surrey, of which his wife was tenant. Until June, 1930, a married sister of the defendant's wife, with her husband, lived, with the defendant's permission, at 26, Oxford-road. From June, 1930, and at the time proceedings were begun in the county court, a sister of the defendant was residing there. The county court judge held that the defendant was not in actual possession of the premises when notice to quit was given, and that he did not obtain possession within the meaning of the Rent Restrictions Acts by the occupation of his wife's or his own relations. He accordingly made an order for possession. The defendant now appealed.

TALBOT, J., said that the question they had to decide was a very important one, namely, whether a man who was in every other respect the tenant of premises was entitled to the protection of the Rent Restrictions Acts if in fact he did not reside at the premises himself. It was said that the whole scheme of the Acts showed that they were intended to protect those who actually lived in houses within the scope of the Acts from being turned out of them. He referred to *Gollis* v. *Flower*, 65 SOL. J. 108; [1921] 1 K.B. 409; *Mellows* v. *Low*, 67 SOL. J. 261; [1923] 1 K.B. 522; *Hicks* v. *Scarsdale Brewery Co.* [1924] W.N. 189; and *Kreitman* v. *Vidofsky*, 43 T.L.R. 335. Despite those decisions, however, he felt bound to follow what was said by SCRUTTON, L.J., in *Haskins* v. *Lewis*, 47 T.L.R. 195: "One thing is quite clear," said the lord justice in that case, "that the original tenant is not residing in those floors; other persons are his sub-tenants, and are residing there, and the consequence is that you have this position, that the original tenant is not occupying any part of the original dwelling-house, so as to make him a tenant under the Act; . . . he is not in personal occupation at all of any dwelling-house. That being so, he appears to me to come within the fundamental principle of the Act, that it is to protect a resident in a house, not to protect a person who is not residing in a house but is making money by sub-letting." Following those words of Lord Justice Scrutton, the appeal would be dismissed.

FINLAY, J., gave judgment to the same effect.

COUNSEL: *Archibald Safford*, for the defendant; *Norman Parkes* and *Frank J. Powell*, for the plaintiff.

SOLICITORS: *Heald, Johnson & Co.; Burton, Yeates and Hart.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Charvonia *v.* Esterman.

Swift and Charles, JJ. 11th June.

LANDLORD AND TENANT—RENT RESTRICTIONS—PRINCIPAL ACT—APPLICATION TO SUB-TENANCY WHENEVER CREATED—TENANT NOT THE "LANDLORD"—RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1920 (10 & 11 Geo. 5, c. 17), s. 12 (9)—RENT AND MORTGAGE INTEREST RESTRICTIONS ACT, 1923 (13 & 14 Geo. 5, c. 32), s. 2 (1).

Plantiff's appeal from a decision of Judge Cluer, Shoreditch County Court.

The plaintiff, Myer Charvonia, became in 1918 the tenant of a house, 48, Pellerin-road, Stoke Newington, N., at a rent within the limits of the Rent Restriction Acts. He remained in occupation of the whole house until 1926, which he sub-let two rooms on the top floor. In 1928 he came into possession of those rooms for one week. Later, in 1928, he sub-let the same two rooms and also another room on the same floor to the defendant, Theodore Esterman, at a rent of £1 0s. 9d. a week. On the 5th June, 1930, the plaintiff gave the defendant notice to quit, expiring on the 14th June. The defendant, claiming the protection of the Rent Restriction Acts, refused to give up possession. In the plaintiff's action in the county court, claiming possession of the three rooms, the judge held that the premises were within the Rent Restriction Acts, and refused to make an order for possession. The plaintiff now appealed.

SWIFT, J., said that the contention had been raised on behalf of the appellant that the three rooms were not a controlled dwelling-house, because they did not come into existence as a separate dwelling-house until after the passing of the Act of 1923. It appeared to him, on consideration, that that view was wrong. He could find nothing in the Act of 1920 to exclude from the operation of its principles the letting of part of a house as a separate dwelling. There was therefore, in this case, a letting of the three rooms in the house as a separate dwelling, and the Act of 1920 applied to that letting unless by some means or other the plaintiff could call in aid the benefit of s. 2 (1) of the Act of 1923. In his (his lordship's) view, the plaintiff had utterly failed to bring himself within the provisions of that section. He was not landlord of the whole house, and never had been; if that tenancy should determine he would again become occupier of the rooms, but as tenant and not as landlord. There was nothing in the Act of 1923 to prevent the Act of 1920 from applying to a sub-tenancy created by a tenant, whenever created. If a sub-tenancy was created, the tenant was not a landlord, and the proviso to sub-s. (1) of s. 2 of the Act of 1923 was inserted to make that perfectly plain. The appeal would be dismissed.

CHARLES, J., delivered judgment to the same effect.

Leave to appeal was granted.

COUNSEL: *L. O'Malley*, for the appellant; *Murly-Gotto*, for the respondent.

SOLICITORS: *Scott Duckers and Co.; H. B. Wedlake, Saint and Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

Rex *v.* Wallace.

Lord Hewart, C.J., Branson and Hawke, JJ. 19th May.

CRIMINAL LAW—MURDER—VERDICT NOT SUPPORTED BY EVIDENCE—CONVICTION QUASHED.

This was the appeal against conviction and sentence of William Herbert Wallace who was convicted at Liverpool Assizes and sentenced to death for the alleged murder of his wife. On behalf of Wallace it was contended that he was decoyed by a bogus telephone message sent to him on the evening previous to the alleged murder, and that the crime was committed by somebody during his absence from the house.

Lord HEWART, C.J., giving the judgment of the court, said that s. 4 of the Criminal Appeal Act, 1907, provided that the Court of Criminal Appeal should allow an appeal if they thought that the verdict of the jury should be set aside on the ground that it could not be supported having regard to the evidence. The conclusion to which the Court had come was that the case against Wallace, which they had carefully and anxiously considered, had not been proved with that certainty which was necessary to justify a verdict of "Guilty." The appeal would, therefore, be allowed, and the conviction quashed.

COUNSEL: *Roland Oliver*, K.C., and *S. Scholefield Allen*, for the appellant; *Hemmerde*, K.C., and *Leslie Walsh*, for the Crown.

SOLICITORS: *H. J. Davis, Berthen and Munro; The Director of Public Prosecutions.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

Lord Justice Giffard died on the 13th July, 1870, at the comparatively early age of fifty-seven, his entire judicial career having lasted little more than two years. Even in the brief ten months that he held the post of Vice-Chancellor, he came to be regarded as a very sound equity judge, being quickly promoted to the Court of Appeal. His elevation was received "with one unanimous acclaim and the whole profession recognised in his appointment the just reward of pure professional merits." On his decease, James, L.J., pronounced in court a very eloquent panegyric of his many fine qualities, describing him as a great lawyer, a great advocate and every inch an English gentleman.

MORE HEALTHY NOW.

"It is not possible to keep a barber's shop absolutely aseptic any more than it is possible to keep a court of justice absolutely aseptic," Avory, J., told a High Court jury recently. It appeared, nevertheless, from the expert evidence that one might usually be safely shorn in either place without fear of contracting any dire disease. Indeed, the judge's bouquet at the Old Bailey is, or was, provided for the express purpose of preserving a breathable atmosphere. The idea goes back to 1750 and the Black Sessions, when Abney, J., Clarke, B., the Lord Mayor and several other persons caught gaol-fever and perished. Thereafter, both prison and prisoners were washed with vinegar, and herbs were burnt in court before each day's sittings. Some years passed, however, before it was decided to pull down the whole insanitary den and rebuild it on a better plan.

OUT OF POCKET.

Despite the traditional gibes of laymen, lawyers are not recognised by thieves as members of a kindred profession. Otherwise, the misfortune of Sir Henry Newbolt, K.C., who was recently relieved of pocket book and Treasury notes, would be a rarer type of occurrence than it is. Only last year, Judge Higgins had his very robes stolen from his car. But probably the most ungracious theft ever suffered by a member of the profession fell to Lord Campbell, C.J., while he was at the Bar. After he had successfully defended a prisoner, he discovered that his client had picked his pocket during a dock-side conference. Chief Baron Macdonald, the presiding judge, was highly amused, and asked whether "Mr. Campbell thought that no one was entitled to take notes in court but himself."

LAWYERS IN BONDS.

The latest serial reminiscences of the war fill nearly a column of a daily paper with a lengthy account of the brief arrest of the late Lord Birkenhead while visiting the front. Some, however, who were familiar with the military zone in France consider that the accidental apprehension of an eminent person who could not show a pass was neither so surprising nor so tragic as to cast a shadow down the years. Moreover, legal luminaries have not infrequently suffered ignominious confinement, one of the best examples being an experience of Lord Camden while he was Chief Justice. His curiosity having been aroused by the stocks near Lord Dacre's house in Essex, he persuaded a friend with whom he was taking a walk to fasten him in. The friend, however, becoming absorbed in a book strolled off reading, leaving the learned judge in an unconventional predicament. Passers-by to whom he appealed for help had no idea of his identity and simply surmised that he "wasn't put there for nothing." Unjudicial adventures of a somewhat similar character befell both Day, J., who had an uncomfortable experience with a treadmill, and Lord St. Leonards, Chancellor of Ireland, who once spent an exasperating quarter of an hour in a lunatic asylum.

The Law Society.

FINAL EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Final Examination held on the 8th and 9th June 1931:—

Tom Akroyd, Richard Latham Archdale, Philip Bryan Armstrong, Harold Backhouse, B.Sc. London, James Bailey, Allan Baldwin, Gordon Bancks, Robert John de Chair Barber, B.A. Oxon, Minnie Barnett, Marjorie Victoria Baron, Arthur Robert Baster, Horatio Vincent Beckett, John Grosvenor Beevor, B.A. Oxon, John Torre Bett, B.A. Oxon, Henry Evelyn Stewart Bird, B.A., LL.B. Cantab., Alec William Walter Blackwell, Thomas Henry Whitley Bower, Charles Ivan Bowerman, Paget Norman Bowman, B.A. Oxon, Reginald Thomas Frank Brandreth, John Francis Brazil, Paul Brentnall, Wilfrid George Bretherton, B.A. Oxon, Louis James Bretzfelder LL.B. London, George Oldfield Brewis, George William Briggs, B.A. Cantab., Kenneth Frederick Brook, B.A., LL.B. Cantab., Arthur Percival Browne, Norman Hughes Buckley, LL.B. Manchester, Nathaniel Frederick Burge, Aubonè Burnett, George Manning Butts, Harold Edward Buxton, Robert Stirling Muirhead Calder, John William Calvert, Francis Denis Victor Cant, Robert Samuel Carden, John Carslake, B.A. Oxon, Walter Richard Carter, William Oscar Carter, Richard Francis Cartwright, LL.B. London, Alfred Samuel Cash, Arthur Colin Castle, James Russell Chamberlain, B.A., LL.B. Cantab., Harry James Charlton, Charles Leslie Chatwin, LL.B. Birmingham, Edward Forrester Clark, Felix Francis Gordon Clark, Philip Alfred Hugh Clark, William James Clark, Ralph Christopher Gooding Clarke, B.A. Oxon, Howard Royce Clifford, Harold Hubert Cochrane, B.A. Oxon, Louis Cohen, Kenneth Davey Cole, B.A. Oxon, Brian Padgham Cooper, George Emile Coopman, Brian Llewellyn Morgan Davies, Charles Ronald Davies, Mark Davis, Dennis Daybell, John Crichton Parry De Winton, B.A. Oxon, Arthur Piercy Dimes, John Spencer Dixon, Clifford William Dos Santos Doré, Edward Addison Doughty, B.A. Oxon, Thomas Arnold Steel Drake, B.A. Cantab., Edgar Norman Driver, Douglas James Watherston Dryburgh, B.A. Oxon, Kenneth Robert Daniel Durie, Philip Gage Dwyer, B.A. Cantab., Eric Bernard Charles Dyckhoff, B.A. Cantab., George Hugh Edwards, B.A. Oxon, Isaac Edwards, Isaac Elbogen, LL.B. Manchester, Thomas Elderkin, Gerald Frank Emanuel, Joseph Henry Emmett, John Nuttall Maxwell Entwistle, John Jerome Etches, Walter Henry Freke Evans, B.A. Oxon, Robert Ellison Fearnley-Whittingstall, B.A. Cantab., Lawrence Braham Flatau, Edwin George Fowler, Alfred Leslie Freeman, Solomon Morris Fruitman, Paul Furniss, Reuben Galinski, Thomas Edward Gardiner, James Gass, Clifford Ryland George, Philip Clement Gibbons, B.A., B.C.L. Oxon, Noel Jeffrey Raymond Gibbs, Leslie Glass, Alfred William Compton Glossop, John Nevile Wake Gwynne, B.A. Oxon, Allen Balzano Hailey, Henry Lawrence Hall, B.A. Oxon, Percy Halliday, B.A., LL.B. Cantab., John Andrew Hallmark, Percival Hancock, Henry Norman Hanson, John Grosvenor Laurance Harding, Joseph Harford-Overton, LL.B. Leeds, Beryl West Harris, B.A. Liverpool, Edward Rhodri Harris, William Jervàse Harris, Vernon Edmund Gordon Harriss, B.A. Oxon, Richard Grant Hartigan, B.A. Cantab., Francis Hastings Hastings-James, Vernon Haworth, Philip Maurice Herring, B.A. Oxon, Walter Herrington, Peter Higson, B.A. Oxon, Geoffrey Brereton Hocknell, Richard Arthur Iredale Holden, Harold Spencer Holt, LL.B. London, Thomas Lord Holt, Hector Wilfrid Sawell Homewood, M.A. Cantab., Edward Reuben Cyprian Hooper, Stanley Horne, Hubert Ashton Horner, LL.B. Manchester, Thomas Tinmouth Houlsby, Alfred Henry Howarth, Stephen Howe, M.A. Cantab., Thomas Francis Hunt, Charles John Radcliffe Husband, B.A., LL.B. Cantab., Sidney Harold Iles, Kenneth Hugh Ingledew, B.A., B.C.L. Oxon, Walter Thomas Isaac, Emanuel Alfred Jacobs, John Howell Griffiths James, B.A. Cantab., Ernest Logan Bevan Jenkins, M.A. Cantab., Frank Ralph Johnson, Eric Gordon Jones, Griffith Edward Allyn Jones, B.A., LL.B. Cantab, Megan Helen Jones, B.A. Wales, Richard Vaughan Estyn Jones, Ernest Donald Kempe, Robert Henry Kersley, B.A., LL.B. Cantab., Alfred Kerstein, LL.B. London, John Douglas Kewish, Andrew Lennox Kidd, Philip Robert Kimber, Margaret Duff Kirby, Charles William Goodwin Trinder Kirk, LL.B., London, Finlay Tower Kitchin, B.A., LL.B. Cantab., Andrew John Knox, B.A. Oxon, John Henry Adeney Lang, LL.B. London, Robert Harold Latter, Alfred Reginald Laxton, Montague Levy, Edmund Naylor Liggins, Frederick Guy Livingstone, Gwilym Llewellyn, Charles Gordon Lloyd, B.A. Cantab., Edmund Fallowfield Longrigg, B.A. Cantab., Benjamin Longworth, Charles Edwin Lowe, Owen Frederick Lowless, James Southworth McGraw, James Russell MacPherson, Sydney James McVicar, Ernest James Mander, Derick Rolfe Martin, Harold Arthur

Mason, Jacob Maurice Mass, LL.B. Liverpool, Patrick Richard Phillimore Mathias, B.A. Cantab., William George Matthews, Harry Turner Meades, LL.B. Birmingham, Frederick Buckley Meadowcroft, Charles Francis Kilner Mellor, B.A., LL.B. Cantab., Harold Charles Mellor, Ieuan Montgomerie Mendus, Claude Jess Metcalfe, Denis Moore, LL.B. Manchester, William Cledwyn Morgan, Harry Frank Grave Morris, B.A. Oxon, Ralph Jacob Myers, John Whitley Nance, LL.B. Liverpool, Charles Maurice Napper, John Henry Nicholson, Ferdinand Gerald Nigel, Terence Owen O'Shea, Thomas Leslie Outhwaite, Henry Vaughan Page, George William Palmer, Roger Mountjoy Braddon Parnall, John Chapman Lambert Parry, Frank Bernard Pears, Alec Hughes Penn, John Henry Pethybridge, B.A. Oxon, David Linton Pollock, B.A. Cantab., Philip William Rolph Pope, B.A. Cantab., Harry Drake Popplewell, Leslie Gascoigne Powell, Morris Preston, B.A. Oxon, Robert Preston, Arthur Leonard Price, Lawrence Vernon Priestley, LL.B. Leeds, Douglas Colin Robert Puckle, B.A. Cantab., Denis Herbert Pullin, B.A., LL.B. Cantab., Geoffrey Swinburne Raynes, Hedley Reddish, Paul John Dinsmore Regester, Alan Randall Reynolds, Harry Burton Ringrose, B.A., LL.B. Cantab., Charles Esmond Roberts, Jesse Roberts, Donald Hay Robinson, Paul Maltby Robinson, Frederick Ross, Edmond Anselm Alban Ryan, Eric John Sadler, B.A., LL.B. Cantab., Margaret Satchell, Bruce Frederick Savage, Frederic Clarkson Scorah, LL.B. Sheffield, Robert Kersly Seddon, LL.B. Manchester, George William Eustace Sherrard, Thomas Spensley Simey, B.A. Oxon, Janet Macrae Simpson-Smith, Francis William Sinden, Arthur James Linning Skelton, B.A. Cantab., Richard Howard Smallman, Donald Charles Smith, Harold Souden Smith, James Smith, John Netherwood Smith, Henry Gerald Smith-Spark, B.A. Cantab., Edward Steele, James Frederick Stephenson, Julius Stone, B.A., B.C.L. Oxon, LL.M. Leeds, Harold Maitland Storer, Freda Watson Strange, Eric Richard Summer, B.A. Cantab., John Harrison Sutcliffe, John Felix Crealock Swayne, Ralph Sweeting, B.A., LL.B. Cantab., Thomas Cresswell Butson Tarn, B.A. Cantab., Charles Taylor, Charles Alexander Rennie Thomas, John Thomas, Joseph Thomas-Davies, B.A., B.C.L. Oxon, William George Frederick Thompson, Douglas Thomas Thorne, Ronald Thornely, B.A. Cantab., Tobias Harry Tilley, John Edmund Tolhurst, Denis Brougham Tracey, B.A., Com. Manchester, Thomas Dowell Trouncer, B.A. Oxon, John Harcourt Linley Trustram, B.A. Cantab., John Ferrier Turing, Arthur Hanney Uren, William Archibald Frank Veitch, Roland Henry Wade, B.A., LL.B. Cantab., Joseph Kenneth Walker, B.A., LL.B. Cantab., Percy Walsh, LL.B. Leeds, Thomas Mervyn Llewellyn Walters, Hugh Clough Waters, Edward Howsley Watson, LL.B. Leeds, Edric Humphrey Weld, Bertie Wendorff, Frank Howard Whitaker, LL.B. Leeds, John Gateward Davies Whitaker, Richard Owen Whitaker, Peter Henry Whitfield, Herbert William Whitney, John Arthur Whittaker, William Whitworth, Hugh Charles Wickham, Oliver Wiles, George Edward Williams, John Lumley Williams, Watcyn Vaughan Williams, Gerald Henry Roxby Wilson, Henry James Holt Wiseman, B.A., LL.B. Cantab., Arthur William Wood, John Henry Wootton, Albert Young, Charles Geoffrey Cameron Young, William Richard Blackman Young, M.A. Oxon.

No. of Candidates, 350. Passed, 281.

The Council have awarded the following Prizes: To Robert Henry Kersley, B.A., LL.B. Cantab., who served his Articles of Clerkship with Mr. Walter James Taylor, of the firm of Messrs. Wansbroughs, Robinson, Tayler & Taylor, of Bristol, the Edmund Thomas Child Prize, value about £21; to Louis James Bretzfelder, LL.B. London, who served his Articles of Clerkship with Mr. Stuart Burton Donald, and Mr. Harold Bevir, M.A., both of the firm of Messrs. Ernest Bevir & Son, of London; and George Emile Coopman, who served his Articles of Clerkship with Mr. Edward Leo Goulden, of the firm of Messrs. Goulden, Mesquita & Co., of London, each the John Mackrell Prize, value about £13.

Society of City and Borough Clerks of the Peace

This Society held its thirty-ninth annual meeting at the Guildhall, York, on the 30th June, at which numerous points of practice were discussed. Mr. Percy J. Spalding, Clerk of the Peace, York, was in the chair, and entertained the members to dinner in the evening. The following officers were appointed for the ensuing year: President, Mr. F. G. Allen (Portsmouth); Vice-President, Mr. J. W. R. Punch (Middlesbrough); Treasurer, Sir A. Copson Peake, Kt. (Leeds); Hon. Secretary, Mr. E. M. Redhead (Manchester).

The King has been pleased to appoint Mr. FABIAN JOSEPH CAMACHO (Magistrate of District "I") to be an official member of the Executive Council of the Presidency of Montserrat.

Rules and Orders.

THE LAND DRAINAGE (GRANTS TO CATCHMENT BOARDS) REGULATIONS, 1931, DATED MARCH 20, 1931, MADE BY THE MINISTER OF AGRICULTURE AND FISHERIES WITH THE APPROVAL OF THE TREASURY UNDER THE LAND DRAINAGE ACT, 1930 (20 & 21 GEO. 5. c. 44).

Whereas by Section 55 of the Land Drainage Act, 1930, it is enacted that the Minister of Agriculture and Fisheries may make grants towards expenditure incurred or advances on account of expenditure to be incurred by Catchment Boards under the Act in the improvement of existing works or the construction of new works of such amounts as the Treasury may from time to time sanction.

And whereas by the same Section such grants or advances shall be made subject to such conditions as may, with the approval of the Treasury, be prescribed by the Minister.

Now, therefore, I, the Minister of Agriculture and Fisheries, with the approval of the Lords Commissioners of His Majesty's Treasury, do hereby make the following regulations.

1. A Catchment Board proposing to incur expenditure under the Land Drainage Act, 1930, in the improvement of existing works or the construction of new works for which they desire to apply for a grant from the Minister, shall submit to the Minister an application containing the following information:—

A. (i) The total rateable value of hereditaments within the Catchment Area;

(ii) The rateable value of the hereditaments in each administrative county or county borough or such part thereof as is within the Catchment Area;

(iii) The annual value for the purposes of rating for drainage rates of all hereditaments in the internal drainage districts (if any) within the Catchment Area distinguishing between the amount of the annual value of agricultural land and the amount of the annual value of all other hereditaments;

(iv) The actual or estimated annual cost of maintenance of the main river under the control of the Catchment Board and the administrative expenses of the Board;

(v) The distribution of the actual or estimated annual cost of administration and maintenance as between (*a*) counties and county boroughs, and (*b*) internal drainage districts;

(vi) The total acreage of each internal drainage district and the total amount of the drainage rate levied in each such district during the previous financial year;

(vii) The amount of the annual loan charges (if any) contracted in respect of works on the main river carried out prior to the transfer Order under Section 4 (1) (*a*) (i) of the Land Drainage Act, 1930; the period for which such loan charges are still payable; and the annual contribution to be made to those charges by the internal drainage boards;

(viii) The total amount of the actual or estimated annual contributions of the Catchment Board to internal drainage boards.

B. (i) Whether the proposed scheme is for the improvement of existing works or the construction of new works or partly for the one and partly for the other;

(ii) The location of the proposed works;

(iii) A general description of the proposed works;

(iv) Whether the proposed works are to be executed by direct labour or by contract;

(v) Whether the proposed works are to be financed by way of loan or from revenue;

(vi) The estimated average number of men to be continuously employed and the rate of wages to be paid to unskilled men;

(vii) The proposed date of commencement of works and the approximate duration thereof;

(viii) The estimated total net expenditure on the scheme;

(ix) The particulars of the plant to be used, with the estimated cost thereof.

2. No grant shall be made towards the cost of maintenance of drainage works.

3. Every application for a grant shall also be accompanied by a 1-inch Ordnance Survey Map showing the location of the proposed works and one set of plans and sections, together with detailed specifications, quantities and estimates.

4. It shall be within the discretion of the Minister to dispense in any application with any of the particulars set out in these Regulations except Regulation 3 if he thinks it so desirable, or to require such further particulars as the circumstances of any particular application may in his opinion require.

5. The application shall be signed on behalf of the Catchment Board by the Chairman and the Clerk and that signature shall be taken to signify that all the conditions under which the

grant is made by the Minister are accepted and will be complied with.

6. A grant made by the Minister may be in the form of a percentage either of the total net cost of the scheme as approved by the Minister, or of the loan charges required to meet such cost.

7. No grant shall be made, unless the plans and sections of the proposed works have been approved by the Minister.

8. The cost of a preliminary survey may be included as part of the cost of the scheme.

9. Materials or plant of other than United Kingdom origin or manufacture shall not be used in connection with the proposed works without the consent of the Minister.

10. Where a Catchment Board increases temporarily its normal staff for the purpose of carrying out a scheme of works approved by the Minister, the cost of any additional staff proposed to be so employed may be included in the cost of the scheme.

11. Separate accounts of each scheme approved by the Minister shall be kept by the Catchment Board, such accounts to be in a form approved by the Ministry.

12. Advances on account of grant may be made by the Minister from time to time, but such advances may at any time be withheld if the Minister is satisfied that the work is not being properly carried out in accordance with the proposals and estimates approved by the Minister, or that the accounts or other records of the Catchment Board are not being kept in a satisfactory manner.

13. Any officer of the Ministry of Agriculture and Fisheries or any other person nominated by the Minister for the purpose shall :—

(i) as and when required by the Minister, be authorised by the Catchment Board to enter upon and inspect any land or buildings in respect of which proposals have been submitted to the Minister;

(ii) be entitled at all reasonable times to examine such of the books, accounts and vouchers of the Catchment Board as relate to transactions in connection with which grants or advances are payable by the Minister under the Act and these Regulations.

14.—(i) Where a Catchment Board having submitted proposals and estimates to the Minister in accordance with these Regulations and having obtained his approval thereto, subsequently propose to vary their proposals, they shall submit details of the proposed variation to the Minister for his approval.

(ii) If any variation of their proposals is made by the Catchment Board without his consent, the Minister may, if he thinks fit, withhold or reduce his grant, and the Catchment Board shall repay to him, if so required, any advances he may have made in respect of the proposals.

(iii) If any variation of their proposals is made by the Catchment Board with his consent, the Minister may vary his grant either by way of increase or decrease according to the nature of the variation.

15. Where a Catchment Board having submitted proposals and estimates to the Minister in accordance with these Regulations and having obtained his approval thereto, subsequently abandon the scheme of works sanctioned by the Minister before they are completed in accordance with the proposals, they shall repay to the Minister, if required by him, any advances he may have made in respect of the scheme.

16. Nothing in these Regulations shall be construed as requiring a Catchment Board to carry out proposals that have been approved by the Minister if the Catchment Board are of opinion that it is not expedient to do so, but in that case the Catchment Board shall inform the Minister that it is not their intention to proceed with the proposals.

17. These Regulations may be cited as the Land Drainage (Grants to Catchment Boards) Regulations, 1931.

In witness whereof the Official Seal of the Minister of Agriculture and Fisheries is hereunto affixed this twentieth day of March, Nineteen hundred and thirty-one.

(L.S.) *Charles J. H. Thomas*, Secretary.

Approved :—

Wilfred Paling } Lords Commissioners of His
Charles Edwards } Majesty's Treasury.

30th March, 1931.

THE ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) FEES RULES, 1931. DATED MARCH 20, 1931.

In pursuance of subsection (6) of section three of the Acquisition of Land (Assessment of Compensation) Act, 1919,(*) the Lords Commissioners of His Majesty's Treasury hereby make the following rules :—

1.—(1) These rules may be cited as the Acquisition of Land (Assessment of Compensation) Fees Rules, 1931.

(2) In these rules the expression "the Act" means the Acquisition of Land (Assessment of Compensation) Act, 1919.

2. On every application for the selection of an arbitrator made in accordance with the rules made under the Act by the Reference Committee there shall be paid the fee of £3, but in cases where an award is made by the official arbitrator £2 of this application fee shall be treated as having been paid on account of the fee payable under Rule 3 or Rule 4.

3.—(1) On an award made by an official arbitrator under the Act (other than awards made in terms of rent or other annual payment) there shall be paid a fee calculated by reference to the amount awarded to the claimant in accordance with the following scale :—

Scale of Fees on Awards.

Amount awarded.	*Amount of fee.*
	£ s.
Not exceeding £200	5 5
Exceeding £200 but not exceeding £500	£5 5s. with an addition of £1 1s. in respect of every £50 or part of £50 by which the amount awarded exceeds £200.
Exceeding £500 but not exceeding £5,000	£11 11s. with an addition of £1 1s. in respect of every £100 or part of £100 by which the amount awarded exceeds £500.
Exceeding £5,000	£58 16s. with an addition of £1 1s. in respect of every £200 or part of £200 by which the amount awarded exceeds £5,000 but not exceeding in any case £262 10s.

(2) In addition to the fee payable under the scale aforesaid, there shall, where the hearing before the arbitrator in respect of any claim or matter referred to him occupies more than one day, be paid for each day or part of a day after the first day a further fee on the following scale :—

Amount awarded.	*Amount of fee.*
	£ s.
Not exceeding £500	5 5
Exceeding £500 and not exceeding £1,000 ..	10 10
Exceeding £1,000 and not exceeding £5,000	15 15
Exceeding £5,000 and not exceeding £10,000	21 0
Exceeding £10,000 and not exceeding £15,000	31 10
Exceeding £15,000 and not exceeding £20,000	42 0
Exceeding £20,000	52 10

4. Where the award of an official arbitrator under the Act is an award in terms of rent or other annual payment, the following scales of fees shall be substituted for the scales set forth in Rule 3 (1) and Rule 3 (2) of these rules :—

(1)

Amount awarded.	*Amount of fee.*
	£ s.
Not exceeding £10 per annum ..	5 5
Exceeding £10 per annum but not exceeding £25 per annum	£5 5s. with an addition of £1 1s. in respect of every £2 10s. or part of £2 10s. by which the rent, &c., awarded exceeds £10 per annum.
Exceeding £25 per annum but not exceeding £250 per annum	£11 11s. with an addition of £1 1s. in respect of every £5 or part of £5 by which the rent, &c., awarded exceeds £25 per annum.
Exceeding £250 per annum ..	£58 16s. with an addition of £1 1s. in respect of every £10 or part of £10 by which the rent, &c., awarded exceeds £250, but not exceeding in any case £262 10s.

(2) In addition to the fee payable under the scale aforesaid, there shall, where the hearing before the arbitrator in respect of any claim or matter referred to him occupies more than one day, be paid for each day or part of a day after the first day a further fee on the following scale :—

Amount awarded.	*Amount of fee.*
	£ s.
Not exceeding £25 per annum	5 5
Exceeding £25 per annum and not exceeding £50 per annum	10 10

(*) 9-10 G. 5, c. 57.

	£	s.
Exceeding £50 per annum and not exceeding £250 per annum	15	15
Exceeding £250 per annum but not exceeding £500 per annum	21	0
Exceeding £500 per annum but not exceeding £750 per annum	31	10
Exceeding £750 per annum but not exceeding £1,000 per annum	42	0
Exceeding £1,000 per annum	52	10

5. For the purpose of the provisions under Rule 3 (2) and Rule 4 (2) any time spent by the arbitrator in viewing any land which is the subject matter of the proceedings before him shall be treated as part of the hearing. A day shall be taken to be a working period of five hours.

6. These Rules shall come into operation on the 1st day of April, 1931.

The Acquisition of Land (Assessment of Compensation) Fees Rules 1920(†) and the Acquisition of Land (Assessment of Compensation) Fees No. 2 Rules 1920(‡) are hereby revoked except that they shall apply in the case of all valid applications for the selection of an arbitrator under the Act received by the Reference Committee prior to the 1st April, 1931.

7. These Rules shall not apply to Northern Ireland.

Dated 20th March, 1931.

Ernest Thurtle } Two of the Lords Commissioners
Charles Edwards } of His Majesty's Treasury.

NOTE.—The fees prescribed in the above scale are in addition to the stamp duty charged on awards by Section 9 of the Revenue Act 1906 (6 Edw. 7, c. 20).

† S.R. & O. 1919 (1920, No. 285) I p. 936.

‡ S.R. & O. 1919 (1920, No. 690) I p. 938.

THE WORKMEN'S COMPENSATION RULES (No. 1), 1931.
DATED MAY 22, 1931.

1. Paragraph (6) of Rule 41 of the Workmen's Compensation Rules, 1926,(*) is hereby revoked, and the following paragraph shall be substituted therefor:—

"(6) The provisions of this Rule shall apply to claims to compensation and questions arising under any scheme made by the Secretary of State in pursuance of section 47 of the Act as extended or amended by any subsequent enactment with such modifications as the nature of the case may require."

2. At the end of Rule 55 the following paragraph shall be added as paragraph (7):—

"(7) This Rule shall not apply to cases arising under a scheme made by the Secretary of State in pursuance of section 47 of the Act as extended or amended by any subsequent enactment, if it is stated in the scheme that the provisions of the Act as to the summoning of a medical referee as assessor are not to apply to cases arising under the scheme."

3. These Rules may be cited as the Workmen's Compensation Rules (No. 1), 1931, and the Workmen's Compensation Rules, 1926, as amended,(†) shall have effect as further amended by these Rules.

We hereby submit these Rules to the Lord Chancellor.

W. M. Cann.
T. Mordaunt Snagge.
Barnard Lailey.

I allow these Rules, which shall come into force on the 1st day of June, 1931.

Dated the 22nd day of May, 1931.

Sankey, C.

* S.R. & O. 1916 (No. 448) p. 829.

† See S.R. & O. 1927 (Nos. 392 and 393) pp. 747–8; 1929 (Nos. 9 and 267) p. 865 and 1930 (Nos. 385 and 1092) pp. 1011–21.

Legal Notes and News.

Honours and Appointments.

Sir WILLIAM ALLEN JOWITT, K.C., His Majesty's Solicitor-General, was on the 29th June sworn of His Majesty's Most Honourable Privy Council.

ANOTHER COMMISSIONER OF ASSIZE.

The King has approved the appointment of Mr. RAYNER GODDARD, K.C., to be a Commissioner of Assize to go the North-Eastern Circuit (Leeds) in the place of Mr. Justice Mackinnon, who is returning to London. Mr. Rayner Goddard, who was educated at Marlborough College and Trinity College, Oxford, was called to the Bar in January, 1899, and is a member of the Inner Temple and Gray's Inn. He took silk in 1923. In 1928 he was appointed Recorder of Plymouth, having successively been Recorder of Poole (1917-25) and Bath (1925-28).

Mr. CLAUD MULLINS, barrister-at-law, has been appointed one of the Magistrates of the Metropolitan Police Courts in the place of Mr. Alick Tassell, who has retired. Mr. Mullins was called to the Bar in 1913 and had a considerable practice. He has written several books, and his recent production, "In Quest of Justice," has been very well received.

Mr. THOMAS HIDDERLEY, solicitor, Stockport, has been appointed Registrar of the Stockport County Court and District Registrar of the High Court in succession to the late Mr. Louis Hyde.

Mr. K. O. ROBERTS-WRAY, barrister-at-law, of the legal branch of the Ministry of Health, has been appointed Second Assistant Legal Adviser to the Dominions Office and Colonial Office as from 1st July.

Mr. J. BERTRAND WATSON has been appointed President of the Juvenile Courts at Deptford and Woolwich in succession to Mr. Alick Tassell, who has retired.

Mr. J. R. FOGATY, solicitor, has been appointed Clerk to the Justices of the Petty Sessional Division of Christchurch, in succession to the late Mr. John Druitt, who has held the appointment for nearly forty years.

Major W. H. HAMILTON, President, and Mr. JOHN STEVENSON, barrister-at-law, the General Secretary of the Incorporated Society of Auctioneers and Landed Property Agents, have been elected Fellows of the Institute of Arbitrators.

Professional Announcements.

(2s. per line.)

JOHN CHARLES POTTER, in practice as Sloper & Potter, of Bank-chambers, 2 Putney Hill, S.W.15, announces that he has taken into partnership as from 1st May, 1931, EDWARD COLLINGWOOD CHAPMAN, and that the practice will be carried on under the style of Sloper, Potter & Chapman.

Professional Partnerships Dissolved.

WILLIAM HENRY QUARRELL, KEITH SYDNEY THOMPSON, ALFRED LESLIE ATTNEAVE, and WILLIAM JAMES CHANCE QUARRELL, solicitors, 40, Trinity-square, London, E.C.3 (Thompson, Quarrell & Attneave), dissolved so far as A. L. Attneave is concerned, as from 23rd February, 1931. The practice will be carried on in the future by W. H. Quarrell, K. S. Thompson, and W. J. C. Quarrell, under the style of Thompson, Quarrell & Co., at 9, Clements-lane, Lombard-street, London, E.C.4.

HENRY CECIL GEARE and HENRY LESLIE GEARE, solicitors, 3-4, Clements Inn, Strand, W.C.2 (Geare & Son), dissolved by mutual consent as and from 31st March, 1931.

WALTER JAMES WESCOTT BEARD and REGINALD BRABANT SPARKES, Solicitors, 3, 4 and 5, Queen-street, in the City of London (Beard, Sons and Sparkes), dissolved by mutual consent as from 28th May, 1931. The business will be carried on in future by R. B. Sparkes.

MAURICE EDWARD TURNER, ROBERT REGINALD JOHNSTON TURNER, WALTER GREAME PITTS-TUCKER and WILLIAM THOMAS CHARLES CAVE, solicitors, 115, Leadenhall-street, in the City of London (E. F. Turner & Sons), dissolved by mutual consent as from 31st March, 1931, so far as concerns W. G. Pitts-Tucker, who retires from the firm. M. E. Turner, R. R. J. Turner and W. T. C. Cave will continue to carry on the business under the style or firm of E. F. Turner & Sons in partnership with Sydney George Wood.

WILLIAM JOSEPH TAYLOR, JOHN GOODCHILD TAYLOR, NORTON ROCHFORT GARRARD and MAGNUS CHARLES HENDERSON, solicitors, 23 and 23A, Petty Cury, Cambridge (Taylors, Garrard & Henderson), dissolved by effluxion of time, as and from 1st April 1931, so far as concerns W. J. Taylor and J. G. Taylor, who retire from the firm. The remaining partners will continue to carry on the business under the same name and at the same address.

EDWIN SHALLESS and JOHN ERIC LADNER, solicitors, 81, London-street, Greenwich, S.E.10, and 30, Budge-row, E.C.4 (Shalless & Ladner) dissolved by mutual consent as and from 4th May, 1931.

GEORGE ALBERT BARTON, SIWARD JAMES and WILLIAM KENTISH, solicitors, 31, Temple-row, Birmingham (James, Barton & Kentish), dissolved by mutual consent as and from 31st December 1930.

JAMES FOYSTER BOWEN, JOSEPH MONTAGUE HASLIP and ARTHUR SPENCER JACKSON, solicitors, 34, Nicholas-lane, Lombard-street, in the City of London (Wilkinson, Bowen, Haslip and Jackson), dissolved by mutual consent as from 1st January, 1931, so far as concerns J. F. Bowen, who retires from the firm.

Wills and Bequests.

Mr. Harold Whitaker Deighton Fielding, Sheffield, of Smith, Smith and Fielding, solicitors, left estate of the gross value of £6,202, with net personalty £3,982.

Mr. William Stuart Service, of Pollokshields, Glasgow, writer (senior partner of Service and M'Leish), one of the senior members of the Faculty of Procurators, who died on 15th March, aged seventy-four, left personal estate in Great Britain valued at £9,539.

Mr. Reginald Benson, solicitor, Sheffield, left estate of the gross value of £17,446, with net personalty £11,544.

Mr. Victor Albert Noel Paton, Edinburgh, Writer to the Signet, left personal estate in Great Britain of the gross value of £7,178.

Mr. William D. Bowles, St. Pancras and Rogate, solicitor's clerk, left estate of the gross value of £7,126.

Mr. Gilbert Robertson, Cardiff, solicitor, senior partner in Gilbert Robertson and Co., left estate "so far as at present can be ascertained" of the gross value of £7,854 with net personalty £3,297.

Mr. George William Taylor, solicitor, Brighton, late of Morley, Shirreff and Co., Gresham House, E.C., solicitors, who died on 29th March, aged seventy-eight, left estate of the gross value of £19,113, with net personalty £18,958. He left (*inter alia*), £100 to Herbert William Hodd (his personal clerk).

Mr. Arthur Heiron, of West Acton, retired solicitor, who died on 11th March, aged sixty-six, left £30,364, with net personalty £30,075.

BAR EXAMINATIONS.

At the Bar examination held last month no fewer than thirty-one passes in the various subjects, excluding the final examination, were secured by women students. Five women were successful in the final: Miss J. M. Bowie, Miss I. G. R. Davies, Miss M. G. Keating, Miss N. Neville, Miss W. H. Watson.

Among the men students who also passed in the final were: Lord Rathcreedan, Lord Russell of Liverpool, The Hon. Thomas David Freeman Mitford, The Hon. John Rosebery Monson.

There were 1,128 entries for the various subjects, and 740 passes. Out of 235 in the final examination 138 succeeded, and will in due course be called to the Bar.

NEW SOUTH WALES LOTTERY SCHEME.

The director of the New South Wales State lotteries, says *The Times*, hopes to run a lottery every ten days, disposing of 100,000 tickets at 5s. 3d. each. Prizes of £5,000, £1,000, £500 and subsidiaries, totalling £16,300, would be awarded. He estimates that the hospitals would benefit to the extent of over £300,000 a year. All the prizes would be tax free.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. Mr. JUSTICE EVE. Witness. Part II.	Mr. JUSTICE MAUGHAM. Witness. Part I.
M'nd'y July 13	Mr. Andrews	Mr. Blaker	Mr.*More	Mr.*Andrews
Tuesday .. 14	Jolly	More	*Hicks Beach	More
Wednesday 15	Hicks Beach	Ritchie	*Andrews	*Hicks Beach
Thursday .. 16	Blaker	Andrews	More	Andrews
Friday 17	More	Jolly	Hicks Beach	*More
Saturday .. 18	Ritchie	Hicks Beach	Andrews	Hicks Beach

DATE.	GROUP I. Mr. JUSTICE BENNETT. Non-Witness.	Mr. JUSTICE CLAUSON. Witness. Part I.	GROUP II. Mr. JUSTICE LUXMOORE. Non-Witness.	Mr. JUSTICE FARWELL. Witness. Part II.
M'nd'y July 13	Mr. Hicks Beach	Mr. Blaker	Mr. Ritchie	Mr.*Jolly
Tuesday .. 14	Andrews	*Jolly	Blaker	*Ritchie
Wednesday 15	More	Ritchie	Jolly	*Blaker
Thursday . 16	Hicks Beach	*Blaker	Ritchie	Jolly
Friday 17	Andrews	Jolly	Blaker	*Ritchie
Saturday .. 18	More	Ritchie	Jolly	Blaker

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (14th May, 1930) 2½%. Next London Stock Exchange Settlement Thursday, 23rd July, 1931.

	Middle Price 8 July 1931.	Flat Interest Yield. £ s. d.	Approximate Yield with redemption £ s. d.
English Government Securities.			
Consols 4% 1957 or after	95½xd	4 3 9	—
Consols 2½%	60½	4 2 8	—
War Loan 5% 1929-47	103½	4 16 7	—
War Loan 4½% 1925-45	102	4 8 3	4 6 0
Funding 4% Loan 1960-90	97¼	4 2 1	4 2 9
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	98½	4 1 3	4 1 9
Conversion 5% Loan 1944-64	108	4 12 7	4 10 6
Conversion 4½% Loan 1940-44	103	4 7 5	4 4 0
Conversion 3½% Loan 1961	85	4 2 4	—
Local Loans 3% Stock 1912 or after	70½	4 5 1	—
Bank Stock	276½	4 6 9	—
India 4½% 1950-55	82½	5 9 1	—
India 3½%	62½	5 12 0	—
India 3%	53½	5 12 2	—
Sudan 4½% 1939-73	100xd	4 10 0	4 0 0
Sudan 4% 1974	94	4 5 1	4 6 0
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	88½	3 7 10	3 18 9
Colonial Securities.			
Canada 3% 1938	93	3 4 6	4 3 0
Cape of Good Hope 4% 1916-36	98	4 1 8	4 8 0
Cape of Good Hope 3½% 1929-49	87	4 0 6	4 11 3
Ceylon 5% 1960-70	102xd	4 18 0	4 17 8
*Commonwealth of Australia 5% 1945-75	78½	6 7 5	6 10 0
Gold Coast 4½% 1956	100	4 10 0	4 10 0
Jamaica 4½% 1941-71	98	4 11 10	4 12 3
Natal 4% 1937	98	4 1 8	4 7 6
*New South Wales 4½% 1935-1945	62	7 5 2	8 0 6
*New South Wales 5% 1945-65	67	7 9 3	7 10 5
New Zealand 4½% 1945	93½	4 16 3	5 4 0
New Zealand 5% 1946	100½	4 19 6	4 19 9
Nigeria 5% 1950-60	102xd	4 18 0	4 17 6
*Queensland 5% 1940-60	75	6 13 4	6 19 0
South Africa 5% 1945-75	104	4 16 2	4 15 6
*South Australia 5% 1945-75	74	6 15 2	6 16 0
*Tasmania 5% 1945-75	65	7 13 10	7 14 10
*Victoria 5% 1945-75	75	6 13 4	6 15 6
*West Australia 5% 1945-75	76xd	6 11 7	6 14 6
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	67	4 9 7	—
Birmingham 5% 1946-56	107	4 13 6	4 10 6
Cardiff 5% 1945-65	105	4 15 3	4 14 0
Croydon 3% 1940-60	76	3 18 11	4 10 0
Hastings 5% 1947-67	105	4 15 3	4 14 0
Hull 3½% 1925-55	82xd	4 5 4	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	79	4 8 7	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	58	4 6 2	—
London City 3% Consolidated Stock after 1920 at option of Corporation	71	4 4 6	—
Metropolitan Water Board 3% "A" 1963-2003	71	4 4 6	—
Do. do. 3% "B" 1934-2003	73	4 2 2	—
Middlesex C.C. 3½% 1927-47	90xd	3 17 9	4 7 6
Newcastle 3½% Irredeemable	75xd	4 13 4	—
Nottingham 3% Irredeemable	69	4 6 11	—
Stockton 5% 1946-56	103	4 17 1	4 16 9
Wolverhampton 5% 1946-56	105	4 15 3	4 13 3
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	87½	4 11 5	—
Gt. Western Railway 5% Rent Charge	103½	4 16 7	—
Gt. Western Rly. 5% Preference	85½	5 17 0	—
L. & N.E. Rly. 4% Debenture	79½xd	5 0 8	—
L. & N.E. Rly. 4% 1st Guaranteed	73½	5 8 10	—
L. & N.E. Rly. 4% 1st Preference	45½	8 15 9	—
L. Mid. & Scot. Rly. 4% Debenture	82½	4 17 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	74½	5 7 5	—
L. Mid. & Scot. Rly. 4% Preference	46½	8 12 0	—
Southern Railway 4% Debenture	85	4 14 2	—
Southern Railway 5% Guaranteed	101½	4 18 6	—
Southern Railway 5% Preference	84½	5 18 4	—

*The prices of Australian stocks are nominal—dealings being now usually a matter of negotiation.